Volume LII] *December 1937* [*Number 4*

POLITICAL SCIENCE QUARTERLY

THE SEPARATION OF POWERS UNDER DEMOCRACY AND FASCISM

I. *The Traditional Doctrine and the Traditional Criticism*

OF the classical doctrine of separation of powers, which in its modern form derives mainly from Locke and Montesquieu, there are examples in all modern constitutions. Perhaps the most unqualified statement of the doctrine is that of the Massachusetts Constitution of 1780: "In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end it shall be a government of laws and not of men."

The main elements of the classical doctrine are here clearly discernible: (1) the division of government into three powers or functions; (2) the assertion of the necessary, mutual independence of these three powers as the presupposition of sound government; and (3) the desire to rest the validity of the law on a non-human, or rather supra-human basis.

The traditional criticism of this doctrine has followed two well-marked lines. First, it has been explained that the founders of the doctrine, and in particular Montesquieu, were guilty of a misunderstanding of the English Constitution of their time, the constitution on which they professed to base their observations. Neither at Montesquieu's time, nor at any other time did that constitution exemplify a true separation of powers. On the contrary a high degree of unification or confusion of

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powers was evident. Second, all questions of history apart, it is asserted that it lies in the nature of the so-called powers, in legislation, administration and judicial decision, that they cannot truly be separated. There is no clearly marked line of demarcation between them and this is preëminently the case for the most significant offices of state, for example, in England, the crown, the cabinet and the ministry.

These criticisms need not concern us long. They are not the major criticisms, though they have been looked upon as such. By their immanental character, by their assumption, that is, of the initial distinction between three powers of government, they are unable to afford a complete critique of the classical doctrine. Their chief concern is the practicability, the convenience of the doctrine rather than the question of its theoretic validity. Such criticism, while valuable and necessary, does not touch the fundamental doctrine, namely, that there are three powers or functions of government, distinct in nature, which, for sound government, ought to be separated. The questions which arise, therefore, are these: Is there such a trio of powers or functions distinct in nature? Does the soundness or unsoundness of a state depend upon their constitutional separation? It is to these questions that the modern criticism addresses itself.

The following quotation, from the *Report of the Committee on Ministers' Powers,* adequately sums up both the scope of the orthodox criticism and the degree to which, in England, the original doctrine has been retained:

> In the British Constitution there is no such thing as the absolute separation of legislative, executive and judicial powers; in practice it is inevitable that they should overlap. In such constitutions as those of France and the United States of America, attempts to keep them rigidly apart have been made, but have proved unsuccessful. The distinction is none the less real, and for our purposes important. One of the main problems of a modern democratic state is how to preserve the distinction, whilst avoiding too rigid an insistence on it, in the wide borderland where it is convenient to entrust minor legislative and judicial functions to executive authorities.[1]

[1] 1932, I, 5.

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II. *The Modern Attack*

It is asserted that the doctrine of separation of powers is artificial on the grounds, first, that the distinction which it makes between three separate powers or functions of government is an unreal distinction, and second, that it is a myth concealing the real nature of the problem of power. What substance is there in these criticisms?

The argument is founded on the view that the essential state activity is a legal activity, the activity of lawmaking, and that the so-called distinction between legislation and administration is not, therefore, a functional distinction at all but merely a practical distinction between different phases of the same function or process. In this process legislation represents the initial or general stage, the making of general laws (statutes); administration represents the secondary or particular stage, the making of concrete laws for particular cases (administrative acts, judicial decisions). The whole process, from general to particular, is a law-giving process and is the specific activity of the state. To represent the distinction between legislation and administration, then, as one between two different kinds of activity is to misunderstand the nature of law and the state. To this misunderstanding we owe such fictions as that the judge does not make but "discovers" the law. What we have to deal with is not a mystical trinity of functions but a unitary and single process.

To recognize the unitary character of the state's lawmaking activity, however, is not to imply that all stages of that activity must be in the hands of a single organ of government. On the contrary the process may be divided up among as many organs as is thought convenient. Such division, however, (and this is the important point) does not correspond to a distinction between *different* powers of government but is rather the technical organization of a *single* power. Thus, while it would be true to say that the different organs of government, say, the judiciary, the ministry, parliament, exercised different functions, in the sense that they operated at different stages of the lawmaking process, so also it would be true to say that they had to do with an identical function (or power), the lawmak-

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ing activity of the state. The true distinction is not between functions but between functionaries of government.

If we inquire now what necessity compels the division of the lawmaking power among different organs of state, two principles present themselves—a necessary principle of organization and an optional principle of political prudence.

In the modern state it is physically impossible to concentrate the entire business of lawmaking in the hands of one person and mechanically impossible to concentrate it in the hands even of a single body of persons. The necessity of a considerable degree of division of labor is established as well for a dictatorship as for a democracy. And this necessity applies both to making the decisions and to carrying them out. The modern forms of this necessity are the technical complexity of decisions, the huge extent and specialized variety of conditions for which decisions are required, and the specialized character of their concrete application.

It is obvious that the differentiation of labor, which is also division of power, needed to organize the complex modern state runs the constant risk of defeating that end of efficiency which it subserves. There is the danger that efficient authority will be lost in the multiplicity of its agents. In the actual experience of states it is increasingly being suggested that dispersion of power has gone too far and that future efficiency lies in the direction of concentrating or "unifying" power. This view represents the most modern as well as the most ancient attitude to the problem of the distribution of power. Its typical contemporary exponent is fascism.

The persistence of extreme forms of the two doctrines does much to obscure the real terms of the problem of power. On the one hand, the fascist leaders speak only of a completely unified, completely undispersed state power. On the other, many who believe themselves to be champions of parliamentary democracy declare that freedom, equality, democratic rights and the "rule of law" depend on a rigid separation of the three "kinds" of governmental power. The problem is presented as a choice between alternative extremes—"rigid separation" or "complete unification".

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Much of this obscurity has of course an ideological function in the sense that it serves to legitimize the claims to power of a group or class. The myth of separation is clearly of capital value to the protagonists of a régime interested in maintaining the *status quo* by deceiving everyone, often themselves included, as to its real nature, which is the *de facto* concentration of power in the hands of a class and its representatives. The assertion of the "separation of powers" conceals the real fact of their *joint* manipulation by a unitary interest. Again a fascist régime, intent on consolidating its position, is chiefly interested in presenting a united front and in showing that no vestige of the hated liberal separatism remains. Its aim is to accustom the people to an unquestioning obedience and to the acceptance of an unquestioned, unique, personal dictatorship. The former democratic myth, it may be added, is, of the two, the more firmly established.

The truth, however, is that under modern conditions a pure form of neither "separation" nor "unification" is possible. All that is possible is a special emphasis. State power can neither remain undivided nor be broken up into isolated units. It can, however, be successfully mutilated.

What, then, are the real terms of this problem of distributing the state power? The real terms are the two antagonistic tendencies toward dispersion and concentration. From a technical standpoint both of these derive from the increasing complexity of social organization. The technical problem, therefore, is this: to balance the tendency toward increasing division of power with the tendency toward increasing concentration of power at the point of *maximum effective decision*. Or put in other words, dispersion of power should not go beyond that point at which decisions can be taken *and transmitted* (for the carrying out a decision is as much a part of power and responsibility as the decision itself) with the least possible waste of time and energy. To determine this point, to know when it has been reached, is a chief concern of the modern statesman.

One thing emerges clearly from this formulation of the problem and that is, that power can be abused as well by inadequate as by excessive concentration.

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It emerges further that, so far as we have taken the problem, there is no clear reason for preferring any one kind of distribution of power to any other kind except the reason of administrative convenience. In particular we can admit no ground for attaching any special sanctity to the traditional triple division of power. We have already found that doctrine artificial in respect of its insistence on a difference in nature between three "powers" of government. Even overlooking that confusion, however, and looking on the traditional trinity simply as a pattern of dispersion for a single power, we can see no necessary, special magic in the rule of three. The description legislative, executive, judicial cannot by any stretch of meaning be said to classify accurately the various stages of the lawmaking power. To what member of the trinity, for example, are we to assign the power of local government authorities? Local authorities are completely controlled neither by the central government departments nor by the courts. Indeed it is those same persons who most stoutly defend the "separation of powers" who urge the "autonomy" of local government authorities. In view of such difficulties as these it is not surprising that Kant found the doctrine of "separation of powers" as impenetrable to science as the theological doctrine of the Trinity, or that Duguit, the great French jurist, finally dismissed it as simply "jeu et mystère".

So far the treatment of the problem of power has been purely technical. Dispersion and concentration of power have appeared merely as alternative modes of procuring an efficient organization. No question as to the ends to which this efficiency is to be put has as yet arisen. From this point of view the distribution of power is wholly a matter of administrative convenience.

As already suggested, however, a second principle may compel a dispersion of power—what we have termed a principle of political prudence. This principle, which is as old as political philosophy itself, has received an extraordinary variety of expressions. The principle asserts that the freedom of the individual depends upon the division (separation) of public power and that the greater the number of agents among

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whom power is divided the greater the security from abuse of power. Or put in another and more curious way, the greater the number of men participating in authority, using and possessing power, the more likely that the government will be a "government of laws and not of men". Dispersion of power is here obviously more than a mere division of labor; it is a cardinal political precaution. This precaution is the preëminent characteristic of democracy. Its absence is autocracy or dictatorship.

The desire to endow the state power, the law, with that impersonal quality, which reason and belief alike attributed to justice, led democracy to two constitutional expedients—to a doctrine of natural rights and to the separation of powers. By the first of these, certain so-called fundamental, inalienable, human liberties were declared exempt from collective interference; by the second, they were safeguarded by splitting up the lawmaking power into three independent and antagonistic instances. In the resulting stasis it was hoped that individual liberty would flourish like the green bay tree.

The lessons of this atomistic view of liberty are with us now. In the evil consequences of an excessive emphasis on fundamental rights and on a rigid separation of powers the American example, among others, has sufficiently instructed us. Such demonstrations of a practical order are now convincing us of a truth familiar to speculative idealism from Plato to Hegel, the truth, namely, that individual freedom is not possible without collective freedom. The modern state is no longer the "adequate" environment for the rugged individualist.

To discover that individual freedom and collective freedom are related, are bound together, is not to solve the problem of power but only to state it afresh. It is the special nature of the relationship which is at issue. Two views divide the field of possible answers. The first view regards the relationship of individual to collective freedom as a disjunction, as a relationship, that is, in which the terms are mutually exclusive, so that the more you have of the one (say, individual freedom), the less you have of the other (say, collective freedom). The

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second view regards the relationship as one of mutual inclusion —the more you have of one of the terms (say, individual freedom), the more you have of the other (collective freedom). Within the limits set by these two general views an infinite variety of emphasis is possible. But any form of state and any form of distribution of power can be brought under one of them. Where, within these limits, is the emphasis placed by democracy and fascism respectively?

To the national socialist the theory of democracy, a theory which he invariably speaks of as liberalism, involves an atomistic, essentially egotistic view of the state. The root idea is that of the sovereign individual, possessed of a catalogue of basic rights which the state cannot touch. The state, indeed, is only a "night watchman", whose preëminent and negative function is the guardianship of a parcel of "rights" which are merely economic interests in disguise. Anything more than the minimal exercise of power necessary for order is technically described as "interference". Moreover, by placing the state in eternal conflict with the individual, liberalism renders the unity of the state not necessary but fortuitous.

To the national socialist the liberal view of the state seems fundamentally anarchic. The state for him is not a mere residual form of order, not the guardian of rights which are assumed to have arisen prior to its inception and, therefore, to transcend its authority. It is an objectively valid, independent entity, a "value-entity", in which every individual has the position appropriate to his services and qualities. The national socialist view of the state is a universalistic, the liberal, an individualistic view. And here national socialists approvingly quote the father of Italian fascism: "Liberalism denied the state in the interest of the separate individual; fascism affirms the state as the true reality of the individual. And if freedom is to be a quality of the true man . . . then fascism is for freedom. It is for the only freedom that can be taken seriously, for the freedom of the state and of the individual in the state." [2]

[2] Mussolini, *Le Fascisme*, 1933, pp. 19-20.

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In the phraseology of English political theory, there is here a fundamental distinction between the utilitarian view of the state and its opposite. For the "liberal", the "individualist", the state is properly no more than the necessary complement to his own self-interest. Allegiance to it is simply regard for private satisfaction, common sense, instructed by experience, having shown the chief safeguard for that satisfaction to lie in a compulsive system of mutual tolerance. There is no "obligation" to the state, however, other than the obligation, if it can be called such, to pursue one's own interest. For the "universalistic" national socialist on the other hand, the state is objectively valid, something existing above and despite him, dependent in no way on his approval or disapproval. To this state he has, as a matter of plain fact, duties. This is not a matter for argument; he simply recognizes that he has these obligations to the state but no rights which are not conferred by it upon him. To ask why or whether one ought to acknowledge such obligations is for the national socialist a meaningless question. The utilitarian view implies that we may scrutinize the acts of the state in the light of their contribution to our personal satisfaction and condemn or approve them accordingly. For the national socialist no such criterion and no such judgment are possible. He *has* those obligations, and he feels them as independent of his private interest. He has no freedom outside the state; his only freedom is in the state.

In the opinion of the national socialist then, the democratic view of freedom and the democratic distribution of power come under the first of the two relationships set out above, the fascist view under the second.

It will be convenient at this point to hold up the main course of the argument to permit a short review of the history and present position of the distribution of power under national socialism.

III. *The German Position*

The Weimar Constitution of 1919 had imposed on post-war Germany a republican system of government, both unitary and federal in character—unitary in that the power to amend the constitution was committed to the central government, and fed-

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eral in that a definite sphere of autonomy was left to the states. The principle of separation of powers had full though only implied recognition: the form of wording followed closely the orthodox classification of powers and the traditional trinity was regarded by contemporary and later commentators as a *sine qua non* of the new constitution.

To the actual work of legislation three bodies contributed—the Reichsregierung or Cabinet, the popularly elected Reichstag or National Assembly and the federally elected Reichsrat or National Council. The progress of legislation was normally from Cabinet to Reichsrat, thence to the popular chamber.

In all this the position of the Presidency was of overriding significance. For it was that office which provided the fulcrum on which the constitution was swung from the position of guardian of a parliamentary democracy to that of a formal sanction for virtual dictatorship. The relation of the President to the Reichstag was indirect. He could not initiate legislation. His chief powers were three: (1) the power to appoint the national chancellor or head of the government (Art. 53); (2) the power to dissolve the Reichstag (Art. 25), which was frequently used and was a powerful instrument in the legal revolution of national socialism; (3) the power to govern by emergency decree (Art. 48). The history of this famous article is too well known to need repetition. It is enough to say that the checks on its use, which in theory were sufficient, proved in practice to be totally inadequate.

With the advent of the Hitler government, the constitutional development entered upon a new and transforming phase. The statutory history may be summarized very briefly in the following stages:

I. The Enabling Act (*Ermächtigungsgesetz*)[3]

> This act undertook a complete "reorganization of the obsolescent procedure of the Weimar legislative machine. . . . A completely new legislative procedure is introduced: the path of a statute is no longer from the Reichsrat to the Reichstag [where it needed three read-

[3] April 24, 1933.

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ings], thence back again to the Cabinet. . . . Rather it now suffices to have a resolution of the Cabinet, followed by completion and proclamation by the Reich Chancellor." (Preamble)

II. Acts for the Unification of the States with the Reich (*Gleichschaltungsgesetze*)[4]

The second of these acts, the so-called State Governors Act (*Reichsstatthaltersgesetz*), "unifies the political leadership of the States with that of the Reich. . . . The State Governors will take over the fundamental powers of the States administration and will exercise these in the interests of the Reich as a whole, according to the will of whoever is entrusted with the political leadership of the Reich." (Preamble)

III. The Reconstruction Act (*Neuaufbaugesetz*)[5]

Art. 1. The representative assemblies of the States are abolished. Art. 2. The sovereign rights of the States are transferred to the Reich. (These sovereign rights include legislation, administration and judicial decision.) Art. 3. The State governors come under the control of the Reich Minister of the Interior. Art. 4. "The Cabinet of the Reich can declare new constitutional law."

IV. Act for the Abolition of the Reichsrat[6]

Art. 1. "The Reichsrat is abolished."

V. Act concerning the Head of the German Reich (*Gesetz über das Staatsoberhaupt des Deutschen Reichs*),[7] following the death of Hindenburg.

Art. 1. "The office of Reich President shall be joined with that of Reich Chancellor. The functions and prerogatives hitherto exercised by the Reich President are, therefore, transferred to the Leader and Reich Chancellor, Adolf Hitler."

The one purposive and systematic development clear in this history of the transformation of the Weimar Constitution is

[4] March 31, 1933.
[5] January 30, 1934.
[6] February 14, 1934.
[7] August 1, 1934.

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the unification of power and its centralization in the hands of the Leader and Reich Chancellor. Supreme legislative and supreme executive power reside now, unchecked by any monitory or neutral instance, in the hands of the Leader and his Cabinet. Nor has unification of power been confined to the chief offices of state—it has been attempted throughout the entire machinery of government. The aim has been to eliminate anything in the nature of an independent or non-political body and to erect a single, hierarchic, leadership structure, staffed exclusively from the membership of the Party. Responsibility has undergone a change in meaning which is adequately reflected in the change of Oath for Ministers and Civil Servants. Whereas under the Republic the Oath enjoined allegiance to "the laws and the constitution", it now reads—"I swear to be loyal and obedient to the Leader of the German Reich and People. . . ."

What place, within this framework, has been reserved for the third member of the traditional trinity of powers, that power of which Montesquieu wrote that it was in a sense not a power at all, the judicial power? Is it possible, consistently with the theory and practice of national socialism, to speak now of an independent judiciary in Germany?

As regards the theory of national socialism there is no obscurity about the answer. The idea of a totalitarian state requires not only that there shall be a unified political leadership, that there shall be a unitary and not a federal state, that decision shall be not by majority but by authority and that there shall be an identity of political opinion in the governed, but it requires also that the entire machinery of public administration shall be *uniformly* responsive to dictation from above. And this applies as well to the administration of justice as to that of any other social service. The courts themselves have clearly proclaimed their agreement with this view. The Court of Appeals at Breslau, in a decision on the dismissal of a Jewish employee by the state, said: "Today's constitution is dominated by the principle of political leadership. The courts have, therefore, no right to decide upon the legal validity of political acts of the administration. Any such decision would

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be incompatible with the order of the national socialist state." [8] The coördination of the supreme legislative and executive power with the supreme judicial power was publicly affirmed by the Leader himself at the time of the famous July Purge. "In that hour", he declared, "I was responsible for the destiny of the German nation and was, therefore, the Supreme Judge [*Oberster Gerichtsherr*] of the German people."

In practice the "*Gleichschaltung*" (switching in to a common circuit) of the judiciary has been achieved by a variety of expedients: first, by introducing new standards of judicial interpretation and decision; second, by a reorganization of the personnel of the courts; third, by the erection of a series of special courts standing outside the established machinery of justice.

It was not to be expected that national socialism, whose passion for legalism had induced it to carry forward the bulk of the Weimar Constitution as well as the bulk of the laws enacted under that régime, could be satisfied with any traditional method of interpreting these laws. In the words of the editorial of a leading legal periodical, "all those statutes and rules of law, which in their wording have been carried over into the new state, undergo by that transition a fundamental change. They are no longer to be interpreted according to the meaning of the legislator who first gave them form but according to the spirit and content of the national socialist *Weltanschauung*." [9] Not only interpretation according to legislative intent but also interpretation according to the plain meaning of the words has disappeared as a canon of judicial decision. The "formalism" of the latter method had already provoked a widespread reaction before national socialism came to power. It has now been definitely subordinated as a method of interpretation to three new sources of judicial construction. These sources are the Party Program, Hitler's *Mein Kampf* and the national socialist *Weltanschauung*.

The statutory authority of the first two of these sources has been for long a subject of controversy among German jurists.

[8] Fritz Ermarth, *The New Germany* (Washington, 1936), p. 54.

[9] *Juristische Wochenschrift*, vol. 22, 1936, p. 1517.

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A definitive statement, or as nearly definitive as was possible in the circumstances, was given by the Reich Law Leader, Dr. Hans Frank, at the 1936 Conference of German Jurists, when he said:

> The Party Program . . . has for the German legal profession an importance as decisive as that of the Leader's book *Mein Kampf*. The Party Program is valid, however, for the legal thought and the legal reality of the Third Reich, not as formal statute but by virtue of the creative will of the Leader. The Party Program has not the power of formal statute; it is, however, a guiding line for decision in all the social problems of the German people as well as for the solution of historical tasks. Since in the Party Program are to be found the ultimate aims of the national socialist party, it must be used as a help to the German lawyer in the science, dogma and practice of the law. The Party Program is the line of evolution of German life. Every member of the legal profession must keep to this line in thought and action.

The Minister wound up his address with a golden text for lawyers and judges:

> Say to yourselves at every decision which you make: How would the Leader decide in my place? In every decision to which you are obliged ask yourselves: Is this decision compatible with the national socialist conscience of the German people? Then you will have a firm, iron foundation which, allied with the unity of the national socialist People's State and with your recognition of the eternal nature of the Leader's will of Adolf Hitler, will endow your own sphere of decision with the authority of the Third Reich, and this for all time.

If we disregard the inflated mode of address, a mode which characterizes most contemporary public utterance in Germany, it seems at first glance that, as far as judicial decision is concerned, what is involved here is an attempt to enlarge the discretion of the judge by substituting for the traditional canons of interpretation, according to the plain meaning of the words or according to legislative intent, a more elastic basis for decision. The same intention seems evident also in the

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recent abolition (June 28, 1935) in the penal code of the principle *nulla poena sine lege,* which gives way to a principle permitting judgment by analogy. In the words of the statute: "Whoever commits an act which the law declares punishable, or which is deserving of punishment according to the fundamental idea of a penal law and according to the sound feeling of the people, shall be punished. In the case that no determinate penal law applies directly to the act, it shall be punished according to the law whose basic idea best fits it." In this new law national socialist jurists acclaim the liberation of the judge from the fetters of formal statute and from the cult of precedent.

What is this *Weltanschauung,* this "sound feeling of the people" (*gesundes Volksempfinden*), on which such reliance is placed in the new view of law? Political unity, we are told by all national socialist writers, is founded not on a material but on a spiritual principle. This principle is none other than a common vew of life, for every view of the state implies also a view of life. This view of life, the *Weltanschauung,* is not an intellectual construction; "it has nothing whatsoever", says Goebbels, "to do with learning." It is something, he goes on to say, which the ordinary man may possess equally with the university professor whom, indeed, he commonly surpasses in this ability. The *Weltanschauung* is best described as an attitude of the whole man, a view of life. It is a simple, not a complex, construction. It is the thought of the German people, says Goebbels, "reduced to its primitive and original formulae." Where this view of life is present in a community in a single form and as the common possession of all its citizens, there is the true community. Without it no united state is possible.

Since it is not an intellectual construction, a man cannot acquire the view of life by the usual discursive methods of argument and proof. He must either take it in with his youth or must simply acquire it by act of grace, by revelation. But this need not deter anyone from inquiring into its origin—nor has it deterred many, to judge by the wealth of pronouncement on the subject by national socialist writers. It is cate-

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gorically affirmed that two factors are ultimately constitutive of all such views of life. These factors are the Blood and the Soil.

It is held that all men's physical and mental qualities, their loves and hates, their aspirations and fears, their philosophies and sciences, their arts and recreations are fundamentally conditioned by their racial origin, the Blood. They are secondarily conditioned by their physical locality, the Soil. Between these two factors an intimate though inexplicable relationship exists. To these influences some writers have added a third, the *Kultur,* a term which, though by reason of excessive and ambiguous usage it has come to connote almost as little (or as much) for the German mind as it does for the foreign, may be taken roughly to cover those achievements which are regarded as contributory to civilization and which, according to national socialism, are qualitatively distingushed as between race and race, for example, poems and improvements in sanitation, philosophies and bridges, paintings and flood-dykes. These three factors, Blood (*Blut*), Soil (*Boden*), and *Kultur* are seen to be components of a single object—the *Volkstum.* There is no adequate English translation of this word. It is that to which all the above three factors contribute. It is the people, their biological origin, their land and their achievements.

The *Volkstum* provides the standard of value which distinguishes the good from the bad in states and political activity. That state which neglects its racial, its territorial and its cultural heritage is a bad state and its citizens decadent. Again, if a state pay attention to its culture but give no thought to improve or increase its territory, it is a bad state. But the chief emphasis of all is on race: look to that and all things will be added unto you. The prime duty of the citizens is to preserve and purify their racial stock. Justice, happiness and true freedom are commensurate with biological purity. The chief, general, positive emphasis of the gospel of the *Weltanschauung,* however, is on the necessity of unity. The *Volkstum* before the citizen, the race before the individual, or in the words of the famous Nazi election slogan: "Common interest before

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private interest". The very argument for the *Weltanschauung* itself rests on the necessity of a unified, indeed, a uniform political opinion.

We are now in a better position to estimate the real nature of the "enlarged discretion" conferred by national socialism upon its judiciary. That discretion, as has already been shown, consists chiefly in a permission to the judges to draw for their decisions upon the national socialist view of life, as evidenced in the Party Program, in Hitler's *Mein Kampf* and in the sound feeling of the people, rather than upon formal statute. The true nature of the discretion, however, emerges only when we consider what that view of life excludes. It excludes, namely, any emphasis upon or recourse to individual rights or private liberties. Its emphasis is overwhelmingly on the state interest. It is in fact a new and vitally important instrument for the advancement of the *totalitarian* community and for the continuing elimination of liberal elements in the legal system. "The demand for greater freedom of the judges is coupled in the totalitarian state with the demand to make the judges willing instruments of the state, to make the judicial branch of the government an efficient guardian of the national socialist order. It is vis-à-vis the law-seeking individual, not vis-à-vis the government, that the powers of the arm of justice have been broadened." [10]

The *Gleichschaltung* of the judicial power, that is, its subordination to central dictation, has been further assisted by reforms in the personnel of the courts and by the erection outside of the recognized legal system of special party and people's courts. Judges, in common with the rest of the civil service, are obliged to take an oath of allegiance to the Leader and to the national socialist state; they are obliged to become members of their professional political organization; they are obliged to exclude from their ranks any non-Aryans and persons suspected of Marxist or anti-Nazi sympathies. Political crimes, since the Purge of 1934, no longer pass for decision to the ordinary courts but to a special People's Court (*Volksgericht*), the personnel of which is almost exclusively

[10] Ermarth, *op. cit.*, p. 57.

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made up of party and army men. From the decisions, taken in secret session, of this national socialist Star Chamber there is no appeal.

In this medley of new influences it is a difficult matter to estimate the real position of the judiciary in contemporary Germany, to gauge how far its independence has vanished, what measure it still retains. But that the intention is completely to destroy that independence there can be no doubt. In an authoritarian Leader-state no public power can retain a position of neutrality. To quote again from the Reich Commissioner for Justice:

> Now that legal science and legal practice are for national socialists a unified and self-enclosed whole, based on the unity of the Movement's ideology and especially of its leadership principle, then, in this Third Reich of national socialism, there can no longer be any question of a "separation of powers" in the old sense. . . . There is today only a single power in Germany. That is the power of the Leader, which in its turn rests on the consent of the German people. . . . This power of the Leader is not divided: there can be no talk today of a national socialist legislature, of a national socialist executive, of a national socialist judiciary, as of three wholly separate spheres. No, the unified power of the national socialist Leader-Reich confers specific functions upon specific functionaries—to the end that one section of the State Service may not be played off against another. In the Third Reich it is not possible, as in the epoch of liberalism, under the plea of independence of the judiciary to prosecute a subversive opposition against the united will of state and Leader.

IV. *Freedom and the Distribution of Power*

The relationship of individual to collective freedom, with its associated technical problem of distribution of power, seems, then, to national socialism a relationship of the kind we have described as mutual inclusion. That is, the maximum individual freedom is identical with the maximum collective freedom. Individual freedom means collective freedom. In a free community the whole will of the individual members is

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absorbed in the pursuit of common objectives. To be free a man must will only public ends.

This idealist view of freedom is clearly at least partly responsible for the absence in national socialism of any insistence on safeguards against the misuse of public powers. Such safeguards, notably the separation of powers, were historically too closely associated with the despised liberal tradition of freedom as the absence of state interference. Partly responsible also, however, is a principle equally fundamental to national socialism though not derived from its view of freedom, the principle of authority or leadership. The refusal to erect safeguards against the Leader's misuse of power is grounded on a semi-religious belief in the integrity of the Leader's will. This integrity is an unquestioned assumption, a first premise.

In this view of the state, democratic theory finds two chief elements to reject—first, the belief that in willing public ends wise men must agree and that they need not, therefore, be checked in their use of power, and second, the belief in the semi-divine insight of leaders, whose mere emergence entitles them to blind allegiance. To the sincere fascist, the idealist, the absolutist, it seems that the color of justice is a clear, distinguishable color, not to be mistaken. All men in their *real* wills must agree in recognizing it. To lead men, therefore, who are momentarily blinded by partial and private interest, to constrain them to recognize the truth, the way and the life (the *Weltanschauung*) is not harmful but beneficial to their best natures, and in a cooler hour these same persons would see it to be so. On the assurance of the necessary eventual concurrence of rational wills is based the present right to exact obedience of those possessing special insight, the leaders. The great mass of men must be compelled to be free. In fascism, therefore, the proper attitude of the citizen to the state, the lawmaking power, is an attitude of obligatory acquiescence.

To the democrat, on the other hand, justice is many-colored; just men need not agree. Only to an eye turned away from reality is it not apparent that men in their rational choices differ as profoundly as in their irrational, arbitrary choices. Philosophers are no better agreed on justice than are politi-

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cians. Nor is religious belief unanimous—the most notable characteristic of the history of religions is their continued controversy. The argument, therefore, that men may be constrained out of their present liberties on the ground that they will later agree upon the justice of the final result is not an argument likely to persuade the realist. Again, democracy denies that there are persons, selected by a process of transcendent emergence ("when the Leader is needed, he will appear"), whose superior insight into justice qualifies them to see beyond individual liberties. Democracy as a political philosophy is founded on a denial of Superior Insight, on a denial of Revelation, and on a comprehensive distrust of the good intentions of its leaders. The attitude of a citizen of a democracy to the distribution and exercise of power is an attitude of critical consent.

It is not at all on a basis of the improved prospects of freedom, however, that Western liberal states are invited now to accept a thoroughgoing modification of that principle of dispersion of power which has hitherto been looked upon as an essential element in democracy. The main ground upon which the partisans of unification or centralization stand is the well-known one of efficiency. Democrats are asked to believe that the modern machinery of economic and political control can be run effectively only by a unitary, substantially irresponsible power. A wide range of empirical evidence is offered in support of this claim. Attention is directed, for example, to the great expansion of public works under the European dictatorships, the *Autobahnen* of Germany, the *auto strade* of Italy. To a certain class of critic of democratic institutions such examples seem the very clearest of evidence, the "*manne céleste de bonne doctrine*". There is a readiness, too, to prefer a short-term to a long-term view. Whatever the criteria of economic efficiency, however, and smoothness and speed of working is certainly one of them, it should be clear that they have a primary relation to the ends which that efficiency is to serve. These ends, however, though opinions vary as to what ultimately determines them, are in their immediate aspect political and not economic. Leaving on one side all the par-

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ticular ends which, from self-sufficiency to empire defense, dictate the economic activity of states, there are two general ends with which all such particular ends must be reconciled. These are freedom and national unity. By what standards can the attainment of these ends be measured?

The degree of freedom which a state and its citizens enjoy, it should be clear from what has been said, is not readily amenable to measurement by a standard which will be acceptable to both fascists and democrats. From the democratic, liberal, realist standpoint political freedom, though it necessarily involves a system of mutual, compulsive tolerance, rests fundamentally on the recognition of a state-free sphere of action, a quasi-isolation, for the individual. State activity beyond a certain point is an intrusive force, to be resisted. This view finds its natural expressions in a constitutional system of fundamental rights and in a precautionary dispersion of public power. From the fascist, aristocratic idealist standpoint political freedom requires the abnegation by the individual of any claim to isolated action. The activity of the state is the activity of its members. This view finds its expression in the abolition of fundamental rights and in the concentration of public power. Freedom, therefore, is measured by democracy and fascism according to exactly opposite standards.

In the case of national unity the standards of measurement do not at first glance show the same categorical disagreement. Whatever may be the sources of national unity, whether it be the possession of a common blood or a common mental environment or a common soil or a common view of life, its intensity and extent can be gauged only by the degree of public participation in, and approval of, the existing political order. The register is the amount of consent. To know the amount of consent, however, the amount of dissent must also be known. In this respect fascism cannot claim the efficiency of democracy. If consent is built upon the systematic suppression of dissent, the real state of public opinion must remain unknown.

It cannot be denied, however, that if efficiency be understood in its narrower meaning of economic efficiency, as ability to

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get things done and with the minimum waste of time, money and human effort, there is latent in democracy a real conflict between efficiency and freedom. Freedom and efficiency may be incompatible. The progressive control of a democratic economy may be subject to a law of diminishing returns, in the sense that, after a certain point has been reached, every fresh increase in economic efficiency (that is, controlled elimination of waste) reduces correspondingly the efficient maintenance of that particular freedom on which the democratic view of life depends. This consideration gives deeper meaning to the truism that a true democracy can only be built slowly. This conflict of values may be put in another way. The interest of democracy, it is said, is in the positivity and security of the law. But these are not the same thing. To be positive a legal system requires first, an unambiguous, sovereign source of pronouncement and decision—if it cannot be determined what justice is, then it must be settled what we are to regard as just—and second, a compulsive equipment adequate to enforce decisions. But security demands more of a legal system than this; it demands also the enforced integrity of the state's agents. To enforce integrity, however, very cumbersome machinery (such as a separation of powers) is required. For this reason in all democracies the interest in security has generally impaired the state's, the law's, positive efficiency.

The interest in security finds its chief manifestation in the institution of an independent judiciary. The notion of a complete independence of the judiciary—a notion expressed in a variety of legal myths, as for example, that the judge does not make but "discovers" the law, and in the common law canon of interpretation—is clearly nothing else than the extreme outcome of the democratic emphasis on security; it is that emphasis in a form uncorrected by the corresponding emphasis on positivity. The tendency to see each "power" in an extreme form is at least in part related to the absence of a unitary view of law. Once it is grasped that judicial decision is law-making in the same sense as administrative and legislative decision, then the demand for security can be met in the concrete sphere of judicial decision by the provision of a quasi-

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neutrality, a partial independence, for the state's agents in that sphere. These agents, however, must not be given an absolute independence or the demand for positivity would be left unanswered. It is inevitable, perhaps, in a democracy that the demand for security, concrete security, should lead to a greater neutrality of judicial agents than is compatible with the maximum positive efficiency of the entire lawmaking machine. The "open" form of a democratic society leads by a natural reaction to a special interest in the "close" organization of security; there is a demand that the state's judicial agents, as distinct from those agents concerned with law at its less concrete stages, should be more occupied with the conservation of old values than with the pursuit of new.

Conclusion

The present position of the doctrine of separation of powers, which would be more properly termed the doctrine of division or dispersion of power, is an ambiguous one. In face of the economic and political complexities of the modern world it seems to many that the need of the times is for a radical increase in the planned regulation of human affairs, a regulation which they regard as impracticable without a complete centralization of state power. To others, no less conscious of the need of social management, it seems clear that a thoroughgoing centralization of power, with the abolition of all monitory and neutral instances in the constitution which it would involve, must inevitably, even if it were completely efficient in the economic sense, curtail for the individual that state-free sphere of action, that sphere in which, as Hegel said, he wills simply private ends, which they regard as basic in their view of life and as the core of their difference with the political philosophy of aristocracy. To both these groups of critics and adherents of democracy the classical doctrine of separation of powers seems artificial and inadequate to its modern environment. The present need is for a scientific doctrine of division of power. The following is a summary of the main elements of such a doctrine as they have emerged in the above discussion.

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First, the technical and philosophical considerations in the problem must be clearly distinguished. It must be clear that there is a division of power which is simply division of labor and nothing more. If division goes beyond that it does so not on a basis of technical convenience but on philosophical grounds. The real issue is not a problem of administration but a problem of freedom.

Second, the implicit antagonism between the technical and philosophical standpoints must be recognized and resolved one way or another.

Third, the doctrine must be related to the view of the state as a whole, to a political philosophy. It must be shown that, along with the related democratic doctrines of natural right and majority decision, it depends ultimately on a special view of knowledge and reality, on a special scale of values.

Fourth, the "trinity" classification must be shown to be artificial. Though the idea of division follows logically from the democratic view of the state, the particular kind of division is mainly a matter of administrative convenience. The idea of separation is simply an excess. As to the traditional nature of the trinity classification, a scientific doctrine of division of power can take account of tradition only as a factor in the manufacture of consent.

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THE PRESIDENT'S VETO OF PRIVATE BILLS

STUDENTS of American government have given surprisingly little attention to the presidential veto power. The textbooks contain only the most cursory examination of it, the commentaries do little more than repeat the phraseology of the Constitution,[1] and the one attempt at a comprehensive study was made nearly fifty years ago.[2] Such other studies as have been made of the presidential veto have been devoted to a very special phase,[3] and practically no attention has been paid to the distinction between public and private bills,[4] although an analysis will show that this distinction is of considerable importance.

[1] See, for example, W. W. Willoughby, *The Constitutional Law of the United States* (2nd ed.), II, pp. 657-660; and C. K. Burdick, *The Law of the American Constitution,* pp. 81-84. D. K. Watson treats the veto at greater length and includes a sketch of its historical development. *The Constitution of the United States,* I, pp. 353-380.

[2] E. C. Mason, *The Veto Power: Its Origin, Development and Function in the Government of the United States* (Harvard Historical Monographs, No. 1). This was published in 1890, and carries the study through Cleveland's first administration. It has been brought up to date (that is, to June 1934) in certain respects by a supplementary note recently published. See Katherine A. Towle, "The Presidential Veto since 1889", in *Am. Pol. Sci. Rev.,* XXXI, 51-56 (Feb. 1937). A useful, but brief and very general study is that by Richard M. Boeckel, "The Veto Power of the President", in *Editorial Research Reports,* II, no. 21 (Dec. 16, 1932). The Legislative Reference Service of the Library of Congress has published, in photostat, a "Table of Measures Vetoed and Vetoes Overridden, 1789 to Date", compiled by Mildred R. Senior, which is, however, merely a reproduction of a similar table compiled and published by Boeckel, *loc. cit.,* with additional information to the date of May 24, 1935.

[3] The pocket veto and the question of the power to sign bills after the adjournment of Congress have received special attention by commentators and courts. See especially Lindsay Rogers, "The Power of the President to Sign Bills after Congress Has Adjourned", *Yale Law Jour.,* XXX, 1-22 (Nov. 1920); Harold Cohen, "Validity of Pocket Veto", *Boston Univ. Law Rev.,* X, 76-81 (Jan. 1930); Okanogan Indians v. U. S. (1929), 279 U. S. 655 (Pocket Veto Case); Edwards v. U. S. (1932), 286 U. S. 482 (power to sign bills after adjournment).

[4] Mason, *op. cit.,* secs. 65-81, treats the veto of relief and pension bills in

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It is not the purpose of this paper to examine the nature and procedure of private bill legislation.[5] It may, however, be pointed out that the distinction between public and private bills has, in fact, been maintained throughout our constitutional history; and is expressly recognized, not only in the rules and practices of the houses,[6] but also in the statutes.[7] Since 1895 there has even been a statutory definition of a private bill,[8] which now includes within the meaning of that term "all bills for the relief of private parties, bills granting pensions, bills removing political disabilities, and bills for the survey of rivers and harbors."[9] Asher C. Hinds, the noted parlia-

separate sections, but does not seem to appreciate the significance of his analysis in respect of the problem of private bill legislation, of which these bills constitute the bulk. Boeckel, *loc. cit.*, 417-418, has a section on the "Private Pension and Relief Vetoes of Cleveland", but does little more than call attention to the number of such vetoes. Miss Towle notes the veto of "measures private in nature" and gives figures as to their number, but attempts no analysis. Even Robert Luce, in his otherwise rather careful attention to the veto, does not notice this distinction. *Legislative Problems* (1935), chs. 5-6.

[5] For some attention to this problem, see Robert Luce, "Petty Business in Congress", *Am. Pol. Sci. Rev.*, XXVI, 815-827 (Oct. 1932).

[6] See *Senate* and *House Manuals;* e. g., *Senate Manual* (S. Doc. No. 192, 73 Cong., 2 Sess.), pp. 10, 19 (Rule VII, cl. 2; Rule XV, cl. 2); *Constitution, Jefferson's Manual and Rules of the House of Representatives* (H. Doc. No. 413, 73 Cong., 2 Sess.), secs. 742, 849, 853, 893; and A. C. Hinds, *Precedents of the House of Representatives* (H. Doc. No. 355, 59 Cong., 2 Sess.), IV, ch. 89, "Private and District of Columbia Business". For criticism of private bill procedure, see Luce, "Petty Business in Congress"; also his *Legislative Problems,* esp. pp. 607-617.

[7] The authorized edition of the *U. S. Statutes at Large* contains, in volume 6, the private acts passed by the first 28 Congresses (1789-1845); after that, these private acts are published separately in the regular volumes of the session laws and statutes. See, for the first publication in this form, 9 *Stats. at L.* 649 *et seq.* This is in accordance with the Resolution of Mar. 3, 1845, which directed, *inter alia,* "That the work shall contain the Articles of Confederation, the Constitution, all the public and all the private laws and resolves, as well those respecting the District of Columbia as all others, and all treaties with foreign nations and Indian tribes;" and further authorizing the publication in separate volumes of the treaties and private laws. 5 *Stats. at L.* 798, 799.

[8] Act of Jan. 12, 1895. 28 *Stats. at L.* 609.

[9] *U. S. Code* (ed. 1934), p. 1942 (Title 44, ch. 6, sec. 189). This definition, in an Act of Jan. 20, 1905 (33 *Stats. at L.* 611), is an amendment, by the addition of the last phrase, of the earlier definition of 1895.

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mentarian of the House, has interpreted this definition to mean that "a private bill is a bill for the relief of one or several specified persons, corporations, institutions, etc., and is distinguished from a public bill, which relates to public matters and deals with individuals only by classes." [10]

The distinction thus drawn between public and private bills is not entirely clear,[11] but in general it may be said that private bills include primarily bills dealing with relief,[12] pensions [13] and claims (although they may deal with a great many other matters),[14] and the bulk of them provide for a grant of money

[10] Hinds, *op. cit.*, IV, 247, sec. 3285. The State Department, which is responsible for the classification in the published *Statutes*, gives the following definition: "Legislation classed generally as public may be listed as that in which the interest of the government is paramount, particular, or outweighs the other considerations of the act; that in which by the nature and scope of the act, the interest of the public as a whole is affected. Legislation classed generally as private may be stated to include that which is passed for the particular benefit of an individual or group of individuals, in the enactment of which the government or public has no direct or immediate interest." Quoted in L. F. Schmeckebier, *Government Publications and Their Use*, 187.

[11] "The line of distinction between public and private bills is so difficult to be defined in many cases that it must rest on the opinion of the Speaker and the details of the bill." Hinds, *op. cit.*, IV, 247. See also W. F. Willoughby, *Principles of Legislative Organization and Administration*, 439, n. 7. The editor of the *U. S. Statutes* for the State Department has explained that "there are, strictly speaking, no rules which determine automatically the division of laws into private or public acts;" that the principal criterion is the intent of Congress; and that "the determination of the intent of Congress has come heretofore entirely within the discretion of the Editor of Laws of the Department and is based upon the debate of the legislation as it appears in the *Congressional Record;* the nature of the legislation; its effect and scope; whether it is amendatory of legislation which has been classified previously; and upon personal opinion. In addition, an effort is made to follow precedent in order that certain classes of legislation will appear consistently in the proper part of the *Statutes at Large*." Quoted in Schmeckebier, *op. cit.*, 186-187.

[12] Relief bills alone deal with a considerable variety of subjects, including money claims, removal of legal or political disabilities, change of military and naval records, restoration of or promotion in military and naval rank, etc.

[13] General pension bills, or those granting pensions to classes of individuals, are classified as public bills, private pension bills being those granting pensions to specified individuals only.

[14] Hinds lists more than twenty kinds of bills found on the Private Calendar of the House during the early 1900's, most of them being, however, claims of one kind or another. *Op. cit.*, IV, 248-249.

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TABLE I. COMPARISON OF PUBLIC AND PRIVATE BILL VETOES

Period	President	Measures Vetoed	Private Bills Vetoed	Vetoes Over-ridden	Private Bill Vetoes Over-ridden	Private Bills Recon-sidered
1789-1797	Washington	2	0	0	—	—
1797-1801	John Adams	0	—	—	—	—
1801-1809	Jefferson	0	—	—	—	—
1809-1817	Madison	6	2	0	0	2
1817-1825	Monroe	1	0	0	—	—
1825-1829	J. Q. Adams	0	—	—	—	—
1829-1837	Jackson	12	0	0	—	—
1837-1841	Van Buren	0	—	—	—	—
1841	W. H. Harrison	0	—	—	—	—
1841-1845	Tyler	9	0	1	—	—
1845-1849	Polk	3	0	0	—	—
1849-1850	Taylor	0	—	—	—	—
1850-1853	Fillmore	0	—	—	—	—
1853-1857	Pierce	9	0	5	—	—
1857-1861	Buchanan	7	2	0	0	2
1861-1865	Lincoln	3	0	0	—	—
1865-1869	Johnson	21	0	15	—	—
1869-1877	Grant	43	29	4	3	3
1877-1881	Hayes	12	1	1	0	0
1881	Garfield	0	—	—	—	—
1881-1885	Arthur	4	1	1	0	1
1885-1889	Cleveland	301	271	2	1	12
1889-1893	Benj. Harrison	16[a]	5	1	0	1
1893-1897	Cleveland	42[b]	30	3	2	10
1897-1901	McKinley	6	4	0	0	1
1901-1909	T. Roosevelt	42[c]	27	1	0	5
1909-1913	Taft	30	10	1	0	1
1913-1921	Wilson	33	7	5	0	1
1921-1923	Harding	5	3	0	0	0
1923-1929	Coolidge	19[d]	3	4	0	0
1929-1933	Hoover	21	4	3	0	0
1933-1937	F. D. Roosevelt	103	84	2	0	1
		750	483	49	6	40

[a] 19 according to Boeckel, the Legislative Reference Service, and Miss Towle. The present writer is unable to explain this important discrepancy.

[b] 43 according to Boeckel and the Legislative Reference Service; Miss Towle's figures are the same as mine. In this case, the discrepancy might be due to the fact that the veto of one bill (H. R. 577, 54 Cong.) was returned to the House during the first session of the Fifty-fourth Congress (on May 20, 1896), but was not acted upon until the second session (veto sustained on Dec. 14, 1896). The index to the *Congressional Record* therefore carries this bill in two different volumes, and it may have been counted twice.

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from the Treasury. Some special procedures, begun in 1810, have been devised for dealing in Congress with this class of legislation,[15] although these procedures have not prevented these bills, exceeding by far the public bills in number, from cluttering up the legislative machinery.[16]

The statistics with respect to the veto show that from Washington's administration through the first administration of Franklin D. Roosevelt (1789-1936), there have been 750 presidential vetoes, of which 49, or approximately 6½ per cent, have been overridden.[17] These figures, which are exclusive of the pocket veto,[18] suggest the effectiveness of the veto as a

[c] 41 according to Boeckel, the Legislative Reference Service, and Miss Towle. My figures include the veto of one joint resolution (S. R. 78, would now be called S. J. Res. 78, 60 Cong., 2 Sess., with respect to the boundary between Colorado, Oklahoma and the Territory of New Mexico).

[d] 20 according to Boeckel, the Legislative Reference Service, and Miss Towle. No explanation can be given of the discrepancy.

[15] See note 6, *supra*.

[16] The list of bills introduced, found in almost any number of the *Congressional Record*, is a sufficient indication of the comparative number of private and public bills. Luce has a table showing that "in a typical three weeks period after the opening of a session [1916]," there were introduced into the Senate 54 public bills and 402 private or local bills, into the House 144 public bills and 1523 private or local bills. "The public bills enacted", he says, "amounted to only nine per cent of the total number introduced; 91 per cent were concerned with strictly private or local matters. . . . Within five years after the passage of the Tucker Act [increasing the opportunity to file suits in the U. S. Court of Claims] there were no less than 6931 claims and relief bills in the files of the two Houses. They continue to impede and annoy, a serious detriment to the efficiency of Congress. Their number makes it impossible for committees to handle them adequately. . . ." Luce, *Legislative Problems*, 545, 609, 657.

[17] See Table I. The writer has accepted Mason's figures (433 bills vetoed, 29 vetoes overridden) for the period 1789-1889 (Mason, *op. cit.*, Apps. A and D), but has made his own independent investigation and count for the period since 1889. The compilations of Boeckel and of the Legislative Reference Service agree with that of Mason; Miss Towle, whose expressed purpose is to supplement Mason's study, states the number of vetoes for the period covered by Mason to be 435, but offers no explanation of the discrepancy. Other discrepancies in these various compilations have been noted for the later period. See *infra*, note 19 and notes to Table I.

[18] This paper is concerned only with the direct or qualified veto, since the pocket veto is not subject to the reconsideration of Congress and therefore involves no question of legislative procedure. Miss Towle gives figures showing 308 pocket vetoes from 1789 to June 1934. *Loc. cit.*, pp. 51, 52. It may

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presidential check on legislation. If account is also taken of the threat of veto and of the reshaping of legislation to meet the President's views and thereby to avoid a veto, the importance of this weapon as a device for presidential leadership, and especially for presidential protection of the Treasury, becomes still more evident.

Further analysis of the veto shows even more strikingly the influence of the President with respect to private bill legislation. It may be noted in the first place, that nearly two-thirds (about 64 per cent) of all the bills vetoed were private bills.[19] Secondly, this analysis shows that 43 of the public bill vetoes, or 16 per cent, were overridden; while only 6, or slightly more than 1 per cent, of the private bill vetoes were overridden. The effectiveness of the private bill veto is thus about sixteen times that of the veto of public bills.

Perhaps even more striking, however, is the departure, in the case of private bills, from the usual legislative procedure. The figures show that of the 483 private bills vetoed during the period covered by this analysis, only 40, or less than 10

be noted that President Franklin D. Roosevelt has begun the practice of systematically reporting these pocket vetoes to Congress (although of course not required to do so, and only occasionally done heretofore), together with a statement of his reasons for the veto. See list of 35 such pocket vetoes of bills passed by the Seventy-fourth Congress, in *Cong. Record,* LXXX, 10552-10562. Of these, 27 were private bills. If Miss Towle's figures are accepted, there is thus a total of 330 pocket vetoes from 1789 to 1936. See H. Doc. 493, 70 Cong., 2 Sess., for full list and description of pocket vetoes to Oct. 10, 1928.

[19] Miss Towle, *loc. cit.,* p. 53, n. 38, gives figures for the number of private bill vetoes since 1889 that do not correspond with mine in several instances. This discrepancy may be due to the lack of a precise definition of a private bill, to the difficulty in many cases of classifying measures definitely as public or private, and to consequent differences of opinion as to how particular measures should be classified. See *supra,* note 11. Examples of the confusion are H. R. 577, 54 Cong., 1 Sess. (to pension Lydia A. Taft), H. R. 1139, 54 Cong., 1 Sess. (to pension Caroline D. Mowatt), and H. R. 1185, 54 Cong., 1 Sess. (to pension Rachel Patton), which are listed as public bills, whether through design or error. *Cong. Record,* XXVIII, 5706, 5880 (reports on H. R. 577, H. R. 1139, and H. R. 1185 listed among Reports of Committees on Public Bills). In this case, the writer classified the bills as private bills, in spite of their official classification as public.

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per cent, were reconsidered at all in Congress,[20] and only 35, or about 7 per cent, were brought to a vote. The overwhelming number of private bill vetoes were accepted by Congress without any attempt at repassage, despite the fact that in most cases these private bills were originally passed without a record vote and without opposition.

The procedure for dealing with a vetoed bill is prescribed by the Constitution,[21] seems quite specific and is reasonably clear in its intent. The steps in this constitutional procedure are as follows: (1) the president is to return the vetoed bill to the house in which it originated, with a message of explanation; (2) the president's objections (that is, the message stating his objections) are to be recorded in full in the journal of that house; (3) there is to be reconsideration of the measure, including a roll-call vote; (4) if repassed, the bill is sent to the other house for similar action. The clear intent of this constitutional prescription is to require a reconsideration of and a vote on every vetoed measure, by at least one house, and the language seems to suggest that such reconsideration should occur immediately upon receipt of the veto message. Neither house has amplified or supplemented these constitutional requirements with any rules governing veto procedure, thus implying that the constitutional provision is clear enough in itself.[22]

[20] The writer has treated a bill as "reconsidered" if there was any debate at all or any attempt, whether successful or unsuccessful, to secure a vote on its repassage. For example, several private bill vetoes by Cleveland and Theodore Roosevelt were reconsidered in that they were debated in the house of origin, and/or referred to committee and reported back, although they were not brought to a vote. See S. 249 and H. R. 4526, 54 Cong., 1 Sess.; S. 719, S. 1323, and H. R. 6902, 54 Cong., 2 Sess.; S. 4363, 57 Cong., 1 Sess.; H. R. 9632, H. R. 10095, and H. R. 14051, 57 Cong., 2 Sess.

[21] *U. S. Constitution,* Art. I, sec. 7.

[22] In ruling upon an attempt to suspend the recent debate on the Judicial Reorganization Bill in order to consider the veto of the Farm Loan Bill, the President pro tem. of the Senate (Pittman) made the following statement: "One of the provisions of the Constitution which must be taken into consideration in connection with every other provision is that the Congress may make its own rules of procedure. The Senate has made a rule of procedure with regard to what are called veto messages, and that is that on motion, just as in the case of any other bill, the Senate shall proceed to the consideration

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The procedure indicated is also the procedure that has generally been followed by the houses in respect of public bills,[23] and that it should be so was established from the beginning. Thus, when President Washington, on April 5, 1792, returned to the House the first veto,[24] the veto message was immediately read and ordered to be entered at large on the journal, and an order was made for reconsideration of the bill the next day, "in the mode prescribed by the Constitution." The next day (April 6) the bill and message were again read, there was debate, the question was put "That the House, on reconsideration, do agree to pass the bill," and on roll call the veto was sustained by a vote of 23-33.[25]

The procedural requirements have on several occasions been debated, and particularly the questions of the immediacy of reconsideration and the possibility of postponement. In the Twenty-first Congress (on May 27, 1830), postponement to the next day was sought for the consideration of a veto by

of the bill which has been vetoed. . . ." *Cong. Record,* 75 Cong., 1 Sess. (July 13, 1937), 9231. There is no rule relating especially to veto procedure, and Senator Pittman may have meant the general rule which provides that "The Presiding Officer may at any time lay, and it shall be in order at any time for a Senator to move to lay, before the Senate, any bill *or other matter* sent to the Senate by the President or the House of Representatives, and any question pending at that time shall be suspended for this purpose. Any motion so made shall be determined without debate." *Senate Manual* (S. Doc. No. 192, 73 Cong., 2 Sess.), p. 13 (Rule VII, cl. 7). *Cf.* Rule XXVIII, which authorizes messages from the President or from the House to be received at any stage of the Senate proceedings, with only certain few exceptions. *Ibid.,* p. 34. Similarly, there are no House rules with respect to veto procedure, but only references in the *Manual* to practices and precedents. *House Manual* (H. Doc. No. 413, 73 Cong., 2 Sess.), secs. 101, 104-106.

[23] "It is the usual but not invariable rule that a bill returned with the objections of the President should be read and considered at once." Hinds, *op. cit.,* IV, 360. "The practice in Congress is one of the defects of its procedure. Ordinarily the constitutional provision about vetoes, that the House receiving the message shall 'proceed to reconsider' is construed to call for action at once, and often there is not even debate." Luce, *Legislative Problems,* 183. Luce argues that there is no constitutional necessity for this, as shown by the occasional reference to committee.

[24] Of the Apportionment Bill (H. R. 163, 2 Cong., 1 Sess.), vetoed on constitutional grounds. Text of veto in *Annals of Cong.,* III, 539.

[25] *Ibid.,* 540-541. The vote on a vetoed measure is always on repassage, hence the ayes are for overriding the veto and the nays are for sustaining.

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Jackson,[26] and there was a sharp debate over the question "whether the bill should be reconsidered instanter or whether the reconsideration should be postponed until tomorrow." It was finally agreed "by common consent" that consideration be postponed until the next day, but with the distinct implication that this was done in order to give time for printing the message and putting it in the hands of every member.[27]

This action of 1830 became the precedent for later Congresses. Thus, in the Fifty-third Congress, a point of order was made against an attempt to postpone consideration of a veto by Cleveland on March 2, 1895,[28] even though the postponement sought was in this case to a fixed day and hour (March 4, at 11 : 30) and could not possibly have been intended for the purpose of evading a vote. The argument was that a veto was a question of the highest privilege which could not be postponed, but which required the immediate consideration of the House. Speaker Crisp, in overruling the point of order, first held that "the question of consideration cannot be raised against the proceeding," that is, that a veto must be considered. He ruled, however, that a motion to postpone consideration to a given day "is in itself consideration" and therefore in order. "When a veto message is received from the President," he said, "it does not follow that the House must immediately proceed to vote upon the question. It has been expressly ruled [referring to the ruling and action in the Twenty-first Congress] that the House may postpone the consideration of the subject to a future day."[29]

[26] Of a bill authorizing subscription to stock of the Marysville & Washington Turnpike Road Co. (H. R. 285, 21 Cong., 1 Sess.).

[27] *Cong. Debates,* 21 Cong., 1 Sess., 1138.

[28] Of a bill to authorize the Arkansas Northwestern Railway Co. to construct and operate a railway through Indian Territory (H. R. 8681, 53 Cong., 3 Sess.).

[29] Hinds, *op. cit.,* IV, 364, sec. 3546. During the hottest part of the recent Senate debate on the Judicial Reorganization Bill, Roosevelt's veto of the Farm Loan Bill (H. R. 7562, 75 Cong., 1 Sess.) was delivered to the Senate from the House, which had just overridden the veto. Senator Clark (Mo.) sought and argued for immediate consideration of the veto, making the point of order "that all business is out of order until the veto message of the President has been considered." He was overruled by the President pro tem. (Pittman), who held that to interrupt a speech even for a question of such

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Another question that has been actively debated in connection with veto procedure, aside from the immediacy of reconsideration and to some extent related to it, is the question whether a veto may be referred to a committee. When President Tyler's veto of the tariff bill was returned to the House on August 10, 1842, John Quincy Adams promptly moved that the veto be referred to a select committee of thirteen, with instructions to report. A point of order was made against the motion, on the ground that "it is not in order to refer the said bill, but that the only question for the consideration of the House is, Does the House, on reconsideration, agree to pass the bill?" This point of order was supported by such distinguished members as Caleb Cushing (Mass.) and Henry A. Wise (Va.), who argued that a majority of the committee might refuse to report and thereby indefinitely postpone consideration of the veto, something which the House itself had no power to do; and that, therefore, it appeared that the Constitution did not contemplate reference to a committee. Others however, argued that a veto message might contain a statement of facts which a committee should examine, that this particular message did just that, and hence a reference to committee was entirely compatible with due procedure and within the intent of the Constitution. Speaker White ruled that the House could order reference to committee, this ruling was on appeal upheld by an overwhelming vote (107-9), the motion to refer prevailed, and the select committee was appointed.[80] Since that time the right to refer veto messages to committee has been accepted pretty much as a matter of course, although such reference has been made chiefly of private bill vetoes, and only occasionally of the vetoes of public bills.[81]

high privilege was not possible unless the Senator holding the floor (in this case Copeland) yielded for that purpose, and that such yielding of the floor, unless by unanimous consent, would constitute the end of that speech. The argument was in this case tied up to the ruling with respect to "legislative" and "calendar" day, as well as to the fight over the Supreme Court. Senator Copeland refused to yield, and the consideration of the veto was therefore postponed. *Cong. Record,* 75 Cong., 1 Sess. (July 13, 1937), 9229-9239.

[80] *Cong. Globe,* 27 Cong., 2 Sess., 873, 875, 905; Hinds, *op. cit.,* IV, 366-367, sec. 3550.

[81] See *infra,* note 34, for reason for increasing committee reference.

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The principles of veto procedure thus established, and for the most part scrupulously followed for public bills, are in close conformity to the procedure prescribed by the Constitution, and may be summed up as follows: (1) there must be a reconsideration of a vetoed measure; (2) such reconsideration should be prompt if not immediate (ordinarily within two days); (3) this requirement of prompt reconsideration permits postponement to a day certain, but not indefinite postponement;[32] (4) there may be reference to committee, but with the distinct implication, if not express instruction, that the committee must make a report, and presumably an early report, and that committee reference may not be used as a means of indefinite postponement; (5) there should be action (that is, debate and a vote) by the house itself, although postponement to a certain day and committee consideration may be appropriate steps in the constitutional "reconsideration" of the vetoed bill.[33]

With respect to private bill vetoes, somewhat different principles have been established, and somewhat different procedures have been developed, these principles and procedures tending toward a diminution of congressional and an increase of executive responsibility for private bill legislation. The constitutional requirements have been given a much looser interpretation, the requirement that the veto message be promptly read

[32] "The constitutional mandate that the House 'shall proceed to reconsider' a vetoed bill has been held not to preclude a motion to postpone consideration to a day certain." Hinds, *op. cit.*, IV, 362, sec. 3542. "It is not in order to move to postpone indefinitely." Ruling by Speaker Varnum, Feb. 11, 1811, in *ibid.*, 365, sec. 3548.

[33] Seven public bills vetoed by President Roosevelt during the Seventy-fourth Congress were not reconsidered at all: S. 1453 (to create a Board of Shorthand Reporting); S. 3612 (to provide loans for crop production); S. 3989 (to construct a vessel for research work in connection with Pacific Ocean fisheries); H. R. 3629 (to acquire additional land in vicinity of Walter Reed General Hospital); H. R. 8372 (to acquire land at Miami for naval air station); H. R. 8515 (for extension of public school buildings, for Indian children, in Sanish School District of Mountrail Co., N. D.; H. R. 11969 (to organize Air Reserve Training Corps). However, only two of these (S. 3612 and H. R. 11969) deal with matters of general public concern, although all are technically classified as public bills. On the other hand, Roosevelt's veto of the Bonus Bill (H. R. 9878) was promptly reconsidered (and repassed) in accordance with the usual procedure.

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and recorded in the journal being the only one that is regularly and scrupulously observed. It is only the occasional private bill that receives any serious reconsideration at all after a veto; practically all private bill vetoes are referred to committee instead of being acted upon at once, and such reference to committee has meant, and has pretty clearly been intended to mean, not merely postponement of consideration but indefinite postponement and final burial. In other words, committee reference in the case of private bill vetoes has been a way of sustaining the veto without the constitutional formality of a roll-call vote.[34]

This development of a rather distinct procedure and a special constitutional looseness for private bill vetoes has not come about without occasional sharp protest. In fact, no distinction was at first made between public and private bills in respect of veto procedure. When President Madison, on February 21, 1811, returned the first veto of a private bill,[35] there was considerable discussion over the question whether the Constitution required immediate consideration or whether consideration might be postponed and whether reference to a committee would be in order. The Speaker ruled out a proposal for indefinite postponement, and "conceived that the article on the Constitution [*sic*] on this subject required that the House should proceed to a reconsideration of the bill;" and the House decided against reference to a select committee and in favor of following the precedent in dealing with Washington's vetoes, namely, that reconsideration should be prompt although it might be (and was) put over until the next day.[36] A second

[34] Hinds points out that in the first session of the Fiftieth Congress there were more than 200 vetoes, that disposal of them by an aye and nay vote became a serious problem, and that "in this condition of affairs some of the messages referred to the Invalid Pensions Committee were not reported back." He states further that in the Fifty-ninth Congress "all the veto messages were referred to committees, and were not reported thence." *Op. cit.*, IV, 367, n. 1.

[35] A bill incorporating the Protestant Episcopal Church in Alexandria (H. R. 155, 11 Cong., 3 Sess.). Text of veto in *Annals of Cong.*, XXII, 982-983. This was also Madison's first veto of any kind, and the third veto in our national history.

[36] *Ibid.*, 983-985, 994, 997-998. The veto was sustained on Feb. 23, 1811, (29-74).

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private bill veto by Madison a week later was handled in the same way, and without any further debate over the question of procedure.[37] At no time was there any suggestion that these vetoes relating to private bills should be dealt with differently from any others, and the entire discussion evidently had as its purpose the clarification of the constitutional procedures, on the assumption that whatever procedure was appropriate under the Constitution would apply to all vetoes alike.

Almost fifty years elapsed before there was again a veto of a private bill, the third such veto in our history being one by Buchanan on April 17, 1860.[38] When this veto was delivered to the Senate, Senator Hale (N. H.) promptly and vigorously asserted the novel doctrine that a private bill was so different in its nature from a public bill that there ought to be a different procedure for dealing with private bill vetoes.[39] "As the message of the President is one that depends upon a calculation,[40] I have thought that a course different from that which is ordinarily pursued in reference to a veto might be proper in this case. . . . Vetoes, generally speaking, depend upon some principles of public or national policy, and do not depend upon a detail of accounts." He therefore thought it would be respectful to the President and just to the claimant "to commit the veto message, with the accompanying papers, to the Committee on the Post Office and Post Roads, for the purpose of their having an opportunity to revise and reexamine the figures and calculations which have been made . . . because it will be utterly impossible for the Senate, understandingly, to go into an examination of all these figures." Senator Hale's argument

[37] A bill for the relief of several individuals and the Baptist Church at Salem, Mississippi Territory (H. R. 170, 11 Cong., 3 Sess.), vetoed Feb. 28, 1811, and veto sustained Mar. 2 (33-55). *Ibid.*, 1097-1098, 1103-1106.

[38] A bill for the relief of Arthur Edwards and associates, involving a claim for transporting the mail (S. 29, 36 Cong., 1 Sess.). Text of veto in *Cong. Globe*, XXIX, 1755.

[39] Senator Hale denied that his proposal was novel and said: "I think this will be found to be the first instance in which a private bill has ever been vetoed." He was, however, promptly corrected on this point. *Ibid.*, 1755-1756.

[40] The original claim in this case was for $25,180; the President in his veto estimated that the bill would give the claimants $80,405.23, while several Senators insisted that the bill would not allow anything like that amount.

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for committing the veto to committee was supported by several senators, including such prominent ones as Chandler (Mich.) and Toombs (Ga.). Senator Toombs was "half inclined", as he put it, to support Hale's motion, stating that "ordinarily a veto is on some principle, and, therefore, it is not referred; but this is only a question of money; there is no principle in that, and, therefore, it ought to be referred. On his [Hale's] rule, I think it right. I think voting money here is not on principle. If the Senate acts on its own principles, the motion ought to carry."

Other senators, however, felt that this procedure was irregular and unnecessary. Senator Yulee said he was not aware of any precedent for committing a veto message to committee, declared that he had no serious objection to such a course if there were a precedent, but doubted if it were worth while to make this the first precedent,[41] and clearly had constitutional qualms about the proposal. "The Constitution", he said, "directs that we shall proceed to a reconsideration. That does not require immediate action, I agree; but it may be postponed to any other day as has been the practice of the Senate; but whether the Senate, under the direction of the Constitution, can pass the subject into the hands of a committee for action, I am not aware." Senator Davis argued that a reference to committee for the purpose of investigation would be "a most unfortunate confession that no investigation had been made in the beginning," and felt that the appropriate procedure was a vote on the veto. Senator Mason agreed with Davis, compared the veto provisions of the Constitution to those requiring the House to elect a president in case of failure in the Electoral College, and said emphatically, "I think, therefore, that not only would it be a departure from the precedents, but against the intention of the Constitution, if the subject is referred." In this case the objections to committee reference were too strong, the Senate fixed on a certain day for consideration of the veto, and the veto was sustained.[42]

Although the claim of Senator Hale to a special status and

[41] There were such precedents by this time. *Supra*, p. 514.

[42] On June 7, 1860. *Cong. Globe*, XXIX, 1755-1756, 1860, 2724-2725.

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special procedure for private bill vetoes did not at that time prevail, it represented a doctrine that was vigorously reasserted on later occasions, and has even been carried to the point of questioning the right of the President to veto private bills at all. For example, Senator Palmer (Ill.), in connection with a veto of a pension bill by Cleveland in 1896, seriously doubted the right of the President to attempt to determine the amount of a pension, that being, in his opinion, exclusively a legislative function;[43] and in the same session this proposition was argued also in the House and more vigorously. President Cleveland having vetoed a private pension bill on the ground that the physical condition of the soldier was not due to his army service,[44] Mr. Kirkpatrick (Kans.), in charge of the bill, promptly challenged the President's right to veto bills of this sort:

> In cases of this kind the whole matter is left to the good judgment and sound sense of Congress itself. The power thus confided to Congress . . . was never called in question until this message of the President was sent to the House—never. . . . We contend that the Congress of the United States in its power may take up any individual case of any soldier, whether a general or a private, or of the widow of a general or a private, look into the hardships of the case, into the military service of the soldier, and grant such relief as we, in our judgment, think proper. It is not the province of the President of the United States to place a limitation upon that power. . . . It is always in the power of Congress itself, and I do not believe that the Congress of the United States will sit idly by and tamely submit to the limitation upon its power that must follow if this message becomes a precedent for the future. . . . I appeal to the members of this House

[43] A bill granting a pension to Nancy G. Allabach (S. 894, 54 Cong., 1 Sess.), vetoed Apr. 21, 1896; repassed by Senate, Dec. 15, 1896; veto sustained in House, Feb. 16, 1897. *Cong. Record,* XXVIII, 4246-4247, 5017, 6243; XXIX, 168-170, 215, 1897-1898; Senator Palmer's argument, XXIX, 169 (Dec. 15, 1896).

[44] A bill to pension Francis E. Hoover (H. R. 1094, 54 Cong., 1 Sess.), vetoed Apr. 25, 1896. Text of veto in *Cong. Record,* XXVIII, 4437. Hoover had been given a pension of $8 per month in 1890, which was increased to $12 in 1893, and which by this bill would have been increased further to $50. The original committee reports admitted doubt as to the relation between Hoover's army service and his present disability, although such relationship was also claimed during the debate.

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> to stand up and insist upon the principle that Congress has the power to determine the amount that shall be paid to any poor, unfortunate soldier, and they may do that whether they make the bill general or special. . . . But the strong point I wish to urge here upon this House is that there is no limitation on the power of Congress in granting pensions, and that this message, if it becomes a precedent, will fix a limitation not known to the Constitution or to the law. . . .[45]

Mr. Kirkpatrick's contention was supported by others, among them Mr. Willis (Del.), who closed his argument as follows: "I say, sir, with what little knowledge I have of the Constitution and the history of its adoption, that the veto power was never intended to be applied to a case like that; that it is an abuse and degradation of the veto power to apply it to a case of this sort."[46] On the other hand, there were those who defended both the right of Congress "to pass these pension bills, however pernicious they may be," and equally the right of the President to veto such bills, as well as bills involving important policies or principles.[47] In this case the President's critics won and the veto was overridden.[48]

About sixteen years later, Senator Cummins (Iowa), commonly considered one of the leading constitutional authorities in the Senate, again argued the proposition first asserted by Senator Palmer. A veto by Taft of a relief bill being under consideration,[49] Cummins insisted that the veto power was not intended to authorize a veto of every measure which the President might have opposed, had he been a member of the legislative body, but was probably to be exercised only

> when we [Congress] transgress our constitutional power or when some great policy which is vital to the welfare and the

[45] *Ibid.*, 5521 (May 21, 1896).

[46] *Ibid.*, 5525.

[47] See especially speech of Mr. Bartlett (N. Y.). *Ibid.*, 5523-5524.

[48] In the House, 196-47; in the Senate, 36-9.

[49] A bill for the relief of certain persons having furnished labor and materials for the construction of Corbett Tunnel of the Shoshone Irrigation Project (S. 4862, 62 Cong., 2 Sess.). Text of veto in *Cong. Record*, XLVIII, 9230 (July 18, 1912). This bill involved the payment of a claim.

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> interests of the country is involved. It cannot be true that the Executive, either of a State or of the Nation, may interpose his veto simply because he believes that the legislation is undesirable and simply because he believes that had he been a member of the legislative branch of the Government he would not have given his assent to it. We have here [in this private bill] the simplest and plainest exercise of legislative power and discretion. We have here a bill which not only does not relate to any great policy, which does not involve our constitutional authority to legislate, but which is insignificant from the national standpoint in its consequences and trivial in its amount viewed from the standpoint of national proportions. I think we ought to pass this bill notwithstanding the veto of the President simply, if for no other reason, because Congress has determined that it shall be a law, and because it is not one of the cases in which a President ought to interpose his veto. . . .[50]

This proposition, that the President might veto only bills involving questions of constitutionality or of important national policy (public bills), but that Congress should be unrestrained in legislating on insignificant and trivial matters (private bills), was sharply challenged, especially by Senators Sutherland of Utah (later a justice of the Supreme Court) and Elihu Root. Root called particular attention to Cleveland's repeated vetoes of private pension bills and to the item veto conferred on the governor in many states as indicative of the hitherto almost unchallenged right of the executive to interpose a veto in respect of "insignificant and trivial" details as well as in respect of questions of important policy.[51] The veto was, however, in this case overridden by the Senate, although of course that action is in itself no certain indication that the majority agreed with Cummins' argument.[52]

In fact, the practice concerning the private bill veto has been quite the opposite of that claimed in the Palmer-Kirk-

[50] *Ibid.*, 9924 (July 31, 1912).

[51] *Ibid.*, 9925.

[52] The veto was sustained in the House, the history of the veto being as follows: vetoed July 18, 1912; left on table and debated in Senate, July 30-31, 1912; veto overridden in Senate, July 31, 1912 (42-17); sustained in House, Aug. 16, 1912 (138-77). *Ibid.*, 9230, 9854-9870, 9924-9938, 11119-11128.

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patrick-Cummins proposition. That is, private bills have been given a special status in respect of the veto, but that special status has been such as to result, not only in upholding the President's right to veto these bills, but also in establishing the doctrine that this veto should, as a matter of course, prevail. Every possible device of legislative procedure has, in general, been used in such a way as to secure an indefinite postponement of reconsideration or to prevent action by the house of origin, and thus to sustain the veto by default.

In the first place, the presiding officer frequently has failed to put the question of repassage in the case of private bills,[53] with only an occasional constitutional scruple.[54] In the case of public bills, on the other hand, the question of repassage is generally put promptly upon the receipt of the veto message, and thus the question of reconsideration comes immediately and formally before the house. Where there has been any attempt to depart from this procedure, the protest has been immediate

[53] The question of repassage has been put less than a dozen times since Cleveland, most of these occasions being in the Senate, which seems to have been more scrupulous than the House in following the constitutional requirements. Only two instances have occurred during Franklin D. Roosevelt's first administration, the first being in the case of S. 558, 73 Cong., 2 Sess. (for relief of Beryl M. McHam), vetoed Mar. 1, 1934 (also Roosevelt's first veto), when the presiding officer (Senator Barkley) put the question with this explanatory statement: "That question will be pending, and in the meantime the President's message, the accompanying papers, and the bill will be printed and lie on the table." *Ibid.*, LXXVIII, 3486. Nothing more was heard of this veto, however. In the second case, relating to H. R. 4178, 74 Cong., 2 Sess. (for the relief of the International Manufactures Sales Co. of America), vetoed Feb. 11, 1936, the question was put only because Mr. Rankin (Miss.) particularly asked that it be put and the bill reconsidered then and there, in order to sustain the President, to avoid sending the bill to committee, and "to see it disposed of for all time." The veto was almost unanimously sustained (4-333). *Ibid.*, LXXX, 1817.

[54] The question of repassage was put in the House in connection with H. R. 4763, 60 Cong., 1 Sess. (transferring William Wilmot White from the retired list to the active list of the Navy), vetoed by Theodore Roosevelt, Apr. 7, 1908, and the following exchange occurred: *Mr. Hull* (Iowa): "And it was a good veto, too." *The Speaker:* "The Constitution requires that this vote be taken by yeas and nays." The veto was sustained (0-258). *Cong. Record*, XLII, 4503-4504. It may also be noted that, in spite of this statement by the Speaker, this was the only time the question of repassage of a private bill was put in the House during the administrations of Theodore Roosevelt.

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and vigorous. Thus, when Taft's veto of the Wool Bill [55] was returned to the House and Mr. Underwood (Ala.), the majority leader, moved repassage, Mr. Mann (Ill.), the minority leader, objected. "Mr. Speaker," he said, "I suggest to the gentleman that the Constitution prescribes what the question is, and he is not authorized to make a motion on the subject. The Speaker must state the question as required by the Constitution." In the further exchange between Mr. Mann, Mr. Underwood and the Speaker (Champ Clark), the clear implication of Mann's argument with respect to this somewhat technical point of procedure, whether the question should be put by motion or by the Speaker without a motion, was that under the Constitution the Speaker should automatically put the question of repassage.[56] At any rate, it has become the regular practice to have the question of repassage put promptly in the case of public bills, and not to be put at all in the case of private bills.

Secondly, there has developed the regular practice of promptly referring these private bill vetoes to committee, either on motion or on the initiative of the presiding officer.[57] This

[55] H. R. 11019, 62 Cong., 1 Sess., vetoed Aug. 17, 1911. Text of veto in *Cong. Record,* XLVII, 4103-4105.

[56] *Ibid.,* 4144. The veto was sustained (227-129). On a later occasion, Mr. Mann seemed to assert the same position when, in connection with Wilson's veto of a bill dealing with the postal savings system (H. R. 7967, 63 Cong., 2 Sess.), he objected to the Speaker's reference of the veto to committee on the ground that the "Constitution provides that we are to vote." *Ibid.,* LI, 15019 (Sept. 11, 1914). However, the principal argument in this case was again over a technical point, whether the Speaker might refer or whether reference could be only on motion. See note 57.

[57] On the question of the method of reference, the following colloquy occurred in connection with Wilson's veto of the amendment of the Postal Savings Act (H. R. 7967, 63 Cong., 2 Sess.):

"Mr. Mann. The Speaker has not the power to refer it.

"The Speaker [Champ Clark]. What is the reason?

"Mr. Mann. The Constitution provides that we are to vote.

"The Speaker. The Chair knows that; but that does not mean that it must be done instantly. The gentleman from Tennessee [Mr. Moon], Chairman of the Committee on the Post Office and Post Roads, may make a motion." [Whereupon Mr. Moon moved reference to his committee.]

"Mr. Mann. It has been repeatedly held, Mr. Speaker, that the House can

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committee reference has also carried with it so clearly the implication of indefinite postponement and final burial, that members have felt obliged to emphasize the expectation of a report or particularly to request a report if such burial were not desired. Thus, in the Fifty-fourth Congress, Senator Gallinger (N. H.) argued that a private pension bill vetoed by Cleveland [58] was meritorious and should be repassed, and he was therefore rightly hesitant about agreeing to the reference of the vetoed bill to committee. He expressed himself, however, as willing to have the bill go back to the Committee on Pensions (of which he was chairman) "for further report". The veto was so referred on the understanding that there would be a report, and a report was eventually made.[59] In the Fifty-seventh Congress, a veto by Theodore Roosevelt of a private pension bill having been returned,[60] a motion was made to refer to committee, together with a request for printing the original committee report. Mr. Richardson (Tenn.) wondered why this request was made at the time, pointing out that it was customary to debate vetoes only "when the bill is reported back for consideration by the House. . . . I suppose it is the intention of the committee to return the bill to the House for

refer it by motion. It is not one of those things that the Speaker has power to refer.

"The Speaker. The Chair has not time to hunt it up, but will take the safe course. The gentleman from Tennessee [Mr. Moon] moves that the message and bill be referred to the Committee on the Post Office and Post Roads and printed.

"The motion was agreed to." *Cong. Record,* LI, 15019 (Sept. 11, 1914). No such question over the method of reference has arisen in connection with a private bill, either having been used. On an earlier occasion, however, Mr. Mann suggested reference of a veto to committee as the proper procedure, and did not oppose reference by the Speaker. *Ibid.,* L, 5795 (Oct. 24, 1913, with respect to H. J. Res. 111, 63 Cong., 1 Sess., to reinstate Adolph Unger as cadet at the Military Academy).

[58] A bill granting a pension to Nancy G. Allabach (S. 894, 54 Cong., 1 Sess.), vetoed Apr. 21, 1896.

[59] The veto was overridden in the Senate but sustained in the House. See history of bill, *supra,* note 43.

[60] A bill to pension Thomas F. Walter (H. R. 5761, 57 Cong., 1 Sess.), vetoed Apr. 16, 1902. In the *Congressional Record* this veto is dated Apr. 16, 1901, obviously an error, since Roosevelt was not then President and the session is that of Apr. 16, 1902. *Cong. Record,* XXXV, 4308.

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consideration, is it not?" Even after this prodding, the chairman of the committee (Mr. Sulloway) followed the usual practice when he declined to promise a report. "I am not speaking for the committee", he said, "as to what it is going to do." [61] As a matter of fact, no report was made in this case, and scarcely any report has been made on a private bill veto since, in spite of the regular reference of such vetoes to committee.

Although there has been an occasional twinge of conscience about thus ignoring the constitutional requirement that prompt action be taken on every veto,[62] the generally accepted practice was restated recently by Senator Bailey (N. C.) when, as chairman of the Senate Committee on Claims, he commented without protest on several private bill vetoes referred to his committee. "I think the President's course is one to be commended", he said. "Of course, there will be no effort on my part, and I am sure no effort on the part of the committee, to

[61] *Ibid.*, 4308-4310.

[62] In connection with Wilson's veto on Oct. 23, 1913, of H. J. Res. 111, 63 Cong., 1 Sess. (to reinstate Adolph Unger as cadet at the Military Academy), Mr. Mann inquired the next day whether any action had been taken, whereupon the following colloquy occurred:

"The Speaker [Champ Clark]. No, the Chair kept that on the Speaker's table, as he did not know who was particularly interested in it. The Chair thinks the Constitution really contemplates immediate action on a veto message as soon as it comes in, but that has not been the practice.

"Mr. Mann. The practice usually has been to refer the message with accompanying documents to the committee.

"The Speaker. Yes; and the Chair will refer the message and bill to the Committee on Military Affairs." *Ibid.*, L, 5795. The committee did not make a report, and nothing further happened with respect to the veto.

On an earlier occasion, although in this case referring to a public bill (Johnson's veto of the Civil Rights Bill, S. 61, 39 Cong., 1 Sess., Apr. 9, 1866), Speaker Schuyler Colfax made the following statement: "As the Chair first stated to the House, the Constitution seems to indicate that the House shall immediately vote upon the passage or rejection of the bill, but upon an examination of the precedents he finds that the Congress has acted so as to enlarge this construction very considerably. . . . As the House had on several occasions enlarged what the Speaker would deem to be the strict construction of this provision of the Constitution by a variety of motions apart from the question of passing or rejecting the bill, the Chair thinks the motion to lay this bill on the table is in order. . . ." *Cong. Globe*, 39 Cong., 1 Sess., 1860.

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TABLE II. VOTE ON PRIVATE BILL VETOES

Bill	President	Senate			House				Disposition
		Aye	Nay	Not Voting	Aye	Nay	"Present"	Not Voting	
H. R. 155, 11 Cong., 3 Sess. ...	Madison				29	74			sustained
H. R. 170, 11 Cong., 3 Sess. ...	Madison				33	55			sustained
S. 29, 36 Cong., 1 Sess.	Buchanan	21[a]	30						sustained
H. R. 915, 36 Cong., 2 Sess.	Buchanan				81	67			sustained
S. 273, 41 Cong., 1 Sess.	Grant	41	13	18	12	168		50	sustained
S. R.[b] 92, 41 Cong., 2 Sess.	Grant	2	57[c]	14					sustained
H. R. 1550, 42 Cong., 2 Sess. ..	Grant	not voted upon			126	17		98	sustained
S. 955, 42 Cong., 2 Sess.	Grant	44	1	29	101	44		95	overridden
S. 489, 44 Cong., 1 Sess.	Grant	46	0	27	181	14		94	overridden
H. R. 1337, 44 Cong., 1 Sess. ..	Grant	40[d]	0	30	178[d]	1		106	overridden
H. R. 1015, 48 Cong., 1 Sess. ..	Arthur	27	27	22	168	78		78	sustained
S. 789, 49 Cong., 1 Sess.	Cleveland	19	15	42[e]					sustained
S. 183, 49 Cong., 1 Sess.	Cleveland	55	7	14	153	95		71	sustained
H. R. 4002, 49 Cong., 1 Sess. ..	Cleveland				136	115		67	sustained
H. R. 5997, 49 Cong., 1 Sess. ..	Cleveland				116	124		82	sustained
S. 2005, 49 Cong., 1 Sess.	Cleveland	26	19	31					sustained
H. R. 7108, 49 Cong., 1 Sess. ...	Cleveland				106	86[f]		130[f]	sustained
H. R. 7167, 49 Cong., 1 Sess. ...	Cleveland				111	108		103	sustained
H. R. 1059, 49 Cong., 1 Sess. ...	Cleveland	50	0	26	175	38		109	overridden
H. R. 5394, 49 Cong., 1 Sess. ..	Cleveland				123	122		74	sustained
H. R. 5603, 49 Cong., 1 Sess. ...	Cleveland				124	97		101	sustained
S. 3646, 50 Cong., 2 Sess.	Cleveland	35	8	23	not voted upon				sustained
S. 1958, 52 Cong., 1 Sess.	Harrison	29	18	40					sustained
H. R. 4658, 53 Cong., 3 Sess. ..	Cleveland				97	144	1	106	sustained
S. 894, 54 Cong., 1 Sess.	Cleveland	41	11	37	115	79		161	sustained
H. R. 577, 54 Cong., 1 Sess. ...	Cleveland				98	85		172	sustained

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TABLE II. (*Cont.*)

Bill	President	Senate			House				Disposition
		Aye	Nay	Not Voting	Aye	Nay	"Present"	Not Voting	
H. R. 1094, 54 Cong., 1 Sess. ..	Cleveland	36	9	44	196	47		112	overridden
H. R. 1139, 54 Cong., 1 Sess. ..	Cleveland	39	1	44	143	55		157	overridden
H. R. 4526, 54 Cong., 1 Sess. ..	Cleveland				137	53		165	sustained
H. R. 2219, 55 Cong., 2 Sess. ..	McKinley				0	189	18	148	sustained
H. R. 4763, 60 Cong., 1 Sess. ..	T. Roosevelt				0	258	15	114	sustained
S. 4862, 62 Cong., 2 Sess.	Taft	42	17	35	138	77	12	163	sustained
S. 793, 66 Cong., 3 Sess.	Wilson	9	47	40					sustained
H. R. 1036, 71 Cong., 3 Sess. ..	Hoover				10	278	2	141	sustained
H. R. 4178, 74 Cong., 2 Sess. ..	F. D. Roosevelt				4	333			sustained

[a] This is the vote as recorded in *Cong. Globe,* XXIX, 2725 (June 7, 1860); Mason says 22-30.

[b] Would now be called S. J. Res.

[c] Mason says 30-20; but as above in *Cong. Globe,* XLIII, 1291 (Feb. 16, 1871), and in *Senate Jour.,* 41 Cong., 3 Sess., 299.

[d] This is the vote as given by Mason; in the *Congressional Record* it is recorded as 41-0, 30 not voting, in the Senate; and 177-1, 107 not voting, in the House. *Cong. Record,* IV, 4940, 5011-5012 (July 28, 29, 1876). Mason's figures are accepted, since they are as recorded in the *Journal. House Journal.,* 44 Cong., 1 Sess., 1345-1346.

[e] No quorum on this vote, but no further action. *Cong. Record,* XVII, 7975 (Aug. 4, 1886).

[f] This is the vote as given by Mason, and also as recorded in the *Journal,* while in the *Record* it is given as 106-85, 131 not voting. The discrepancy arises from the fact that Mr. Ranney is recorded in the *Journal* as voting *nay,* and in the *Record* as *not voting. Cong. Record.* XVII, 7703 (July 29, 1886); *House Jour.,* 49 Cong., 1 Sess., 2400.

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report the measures back with a view to overriding the veto." [63]

Thirdly, it has become the almost invariable rule for either house to accept the President's veto of private bills as a matter of course, and to make no effort to override it. The statistics concerning the action on vetoed bills show this to be increasingly true. Less than ten per cent of the private bills vetoed since the beginning of our history have been reconsidered, only about six per cent during the last forty years (since Cleveland), and only about one per cent since the World War.[64] Of these vetoes reconsidered, still fewer have been pressed to a vote, almost half of those in Cleveland's administrations, when the controversy between Congress and the President over pensions was at its hottest.[65]

More than that, members of both houses have made it clear from time to time that they take it for granted that the President knows best about the private bills and that his veto should stand unless there is very special reason to override it. Mr. Richardson (Ala.) therefore felt obliged, in arguing the merits of a bill vetoed by Theodore Roosevelt,[66] to demand the reasons for the veto and to reassert the actual power of the House to repass the measure. "We are not expected just simply because it comes in here with an Executive veto to indorse it and approve it [i. e. the veto] unless we think it is right to do so." The House however, showed that it overwhelmingly approved rather the position of Mr. Burton (Ohio), who said: "This House has occasion for congratulation that the President by the veto ax has put his seal of disapproval upon measures of this kind." [67] Similarly, the House almost unanimously supported Franklin D. Roosevelt's

[63] Four relief bills (S. 925, S. 952, S. 1431, and S. 2734, 74 Cong., 2 Sess.), all vetoed June 1, 1936. *Cong. Record,* LXXX, 8623, 8624-8625 (June 2, 1936).

[64] See Table I.

[65] Thirty-five vetoes were brought to a vote, 17 of them vetoes by Cleveland. See Table II.

[66] A bill to allow N. F. Thompson and others to erect a dam and power station at Muscle Shoals (H. R. 14051, 57 Cong., 2 Sess.), vetoed Mar. 3, 1903.

[67] The veto was referred to committee (and there buried), by a vote of 200-64. *Cong. Record,* XXXVI, 3071, 3072, 3073 (Mar. 3, 1903).

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veto of a private bill [68] when Representative Rankin (Miss.) forced it to a vote, although the bill had originally been passed by a substantial majority in the one house and unanimously in the other.[69] So completely have the houses yielded to the judgment of the President in respect of these private bills that Senator Myers (Mont.), after strenuously but unsuccessfully waging a fight for repassage of such a bill vetoed by President Wilson, remarked sarcastically after the roll call: "Mr. President, I suggest that hereafter I think the Senate would save time if it would consult the President before passing bills." [70]

The regular acceptance of the President's judgment on these bills has, in fact, led some members of Congress apparently to forget their own power of repassage and to wonder how it might be possible for Congress to secure the enactment of laws of this kind. Thus, Representative Kvale (Minn.), who showed some disposition to debate one of Franklin Roosevelt's private bill vetoes,[71] and was squelched by the previous ques-

[68] A bill for the relief of the International Manufactures Sales Co. of America (H. R. 4178, 74 Cong., 2 Sess.), vetoed Feb. 11, 1936.

[69] Passed House Aug. 20, 1935, by vote of 146-115; passed Senate Jan. 16, 1936, by unanimous consent; conference report adopted and bill finally passed on Jan. 27 and Jan. 28, 1936, by unanimous consent in each house; veto sustained in House, Feb. 11, 1936, by vote of 4-333. The colloquy that preceded the vote on the veto is suggestive:

"Mr. Rankin. Mr. Speaker, . . . I desire to say that we who opposed this vicious piece of legislation should like to see it disposed of for all time. I can see no reason for its going to committee, and I am going to object to its going to a committee and move the previous question on the President's veto. I want to vote to sustain the veto. The President has rendered a great service in vetoing this measure, and I want him and the country to know that we are with him on it."

[The Speaker pointed out that it would take time to call the roll, but Mr. Rankin insisted that the matter was important enough for a roll call.]

"Mr. Rankin. . . . We must stop this kind of legislation.

"The Speaker. I think it is stopped.

"Mr. Rankin. But I want to be dead sure of it, and this is the only way those of us who oppose this legislation and agree with the President can get on record as opposing this legislative outrage. . . ." *Cong. Record* LXXX, 1817.

[70] A bill to issue a land patent to the Milk River Valley Gun Club (S. 793, 66 Cong., 3 Sess.), vetoed Feb. 3, 1921; vigorously debated and veto sustained in Senate, Feb. 7, 1921 (9-47). *Ibid.*, LX, 2480, 2719-2723.

[71] A bill for the relief of Rossetta Laws (H. R. 2128, 74 Cong., 1 Sess.), vetoed Apr. 18, 1935. *Ibid.*, LXXIX, 6094.

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tion, was surprisingly meek for one of his vigorous and independent temperament when he was later allowed to speak. He indicated, however, that he was greatly puzzled by the situation. He pointed out that the President did not have the evidence which persuaded the committees and Congress in the first instance, that the bill had passed both houses unanimously, and that the action of the President was based only on a departmental recommendation which the committees of Congress had also considered. "Now, Mr. Speaker," he said, "if the President is to be guided solely by the recommendations of the Department, which Congress has fully considered along with additional facts in trying to do justice to these people who are interested in private bills, I want to ask the Speaker if there is not some way that Congress could follow through upon some of these various measures which are returned to us in this manner and enact them into law over the veto if we feel that the interests of justice require it?" The Speaker in reply informed Mr. Kvale that the Committee on Military Affairs, to which the bill was referred, had the power to consider the bill and report it back to the House, and that the House had the power to repass the bill if it desired to do so; while other members of the House (also members of the Committee on Military Affairs) hastened to remind Mr. Kvale in addition that "these bills on the Private Calendar are given very little consideration by individual members, and that there are a number of other similar bills that should have been stopped right here and never should have been allowed to go to the President of the United States. . . . The President is right in his stand." [72] The implication was clear that, although the power of reconsideration and repassage existed, it ought not be exercised, and, as usual, the matter ended there with formal reference to committee but with no report expected and no report received.

The conclusions from this survey are fairly obvious. It is clear that the practice of the houses has given a special status to private bill vetoes, that the constitutional requirements in respect of veto procedure are very loosely interpreted and

[72] *Ibid.*, 6095.

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applied for private bills, and that the tendency has been to make the veto of such bills virtually an absolute veto.

The reasons for these developments are also fairly obvious. In the first place, the number of bills before Congress is so great that members cannot possibly give serious attention to all, and the public bills are naturally the ones that attract the interest of the general membership. Private bills, by their very nature, are the active concern of only a small number, and commonly of only the introducer in each case. Hence, although passed in large numbers, and generally by unanimous consent, this means in most cases that the bills are passed in default of serious opposition rather than because of enthusiastic affirmative support, and probably also as a "courtesy" to one another or even as the result of "trading". When a private bill is vetoed and thus brought sharply to the attention of the houses, this lack of interest in the measure on the part of the general membership [73] tends to bring support to the President.

Secondly, the petty character of private bill legislation has brought about an increasing feeling that it is a serious waste of the time of Congress to examine the details of these bills, and this in turn has induced members, and especially the leaders in either house, to accept the President's judgment as a matter of course. Finally, the President regularly submits these private bills to the appropriate department for examination and report on the facts, figures and circumstances involved, this departmental report is generally incorporated into or sent along with the veto message, and the factual case made by the President becomes difficult to controvert.

On matters of general policy, Congress is quite likely to assert its own judgment; on matters of detail, it tends to defer to the judgment of the President. That is the general development in respect of administration and administrative legislation in the United States. That would seem also to be the most sensible procedure, although, in respect of the veto, there is grave doubt whether it is strictly in accord with the letter and intent of the Constitution.

[73] Evidenced by the failure to debate and by the high percentage of absentees on roll call. See Table II.

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THE EVOLUTION OF THE GERMAN LABOR FRONT*

THE significance of the transition from the German Republic to the Third Reich is nowhere more strikingly illustrated than in the labor sphere. The right of association anchored in the Weimar Constitution furnished the basis for the whole system of labor legislation after 1919. It is true that the new social and economic order, which some read into Article 165, never materialized and that labor failed to receive fully the right to equal participation with employers in the control of industry and in the regulation of wages and conditions of work. Nevertheless, there emerged during the Republican period a body of labor law which placed an emphasis upon collective bargaining, arbitration and employee representation in workshop and labor court. A strong trade union organization at the base and a generally favorable Minister of Labor at the apex furnished bulwarks against industrial and allied opposition, as a political democracy was crumbling.

The development which followed the designation of Adolph Hitler as Reich Chancellor on January 30, 1933, and which culminated in the announcement of the National Labor Act of January 20, 1934,[1] gave labor legislation in Germany a new basis as well as a new direction. In order to prevent united action on the part of employers or workers, the individual economic enterprise replaced in theory the national arena for matters of labor adjustment. While this new "labor constitution" emphasized the mutual responsibility which bound the "leader" and "followers" of an establishment, it contained

*This article covers developments to August 1936.

[1] *The Act for the Organization of National Labor* (Berlin, 1934), is an acceptable official translation issued by the Ministry of Labor. The standard commentaries are W. Mansfield *et al., Die Ordnung der nationalen Arbeit* (2. Auflage, Berlin, 1934), and H. K. Nipperdey and R. Dietz, *Gesetz zur Ordnung der nationalen Arbeit* (Munich and Berlin, 1934).

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clear recognition of the entrepreneur's right to direct workshop and factory. Rigid control by the state, largely through "trustees of labor", was guaranteed. Democratic processes vanished before the "leader principle", and authoritarian prohibitions and guidance eliminated self-help and collaboration on the part of the employee. And, in addition, the employee was to discover that the benevolence of the state was by no means synonymous with the benevolence of the employer of an earlier date.

While these changes were occurring the German Labor Front (*DAF*) had its origin. Called originally "the spirit and soul of National Socialism" [2] and "the high school of the National Socialist view of life",[3] it has retained these characterizations, although now possessed of a structure which can be subsumed under "spirit and soul" only with a maximum of indulgence and long since graduated from the "high school" ranks. The evolution of this organization, one which has shown a gradual accretion of functions and many structural changes, reveals the methods used by one totalitarian state in establishing a new relationship between labor and capital.

The history of the Labor Front may be conveniently divided into three periods. The first, a period of early experimentation, extends from the creation of the Labor Front in May 1933 to January 25, 1934; the second, a period of reorganization, lasts until October 24, 1934, when a decree was issued according the Labor Front a certain legal status and outlining its functions; the third, a period of internal development and search for a higher synthesis, has not yet ended.

I

With the coming of National Socialism to power the fate of the hostile trade unions was sealed. "It was impossible to fit infected organs into the new social body." [4] The extent of

[2] *Der staendische Aufbau* (NSBO, Heft 42, 1933), 389, 392.

[3] Robert Ley, *Der staendische Aufbau und die deutsche Arbeitsfront* (NSBO, Heft 6, 1933), 7.

[4] *Der Sinn des Gesetzes zur Ordnung der nationalen Arbeit* (Berlin, 1934), 6. This is the official explanation issued by the Ministry of Labor.

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this infection was indicated by the failure of the National Socialist Industrial Cell Organization (*NSBO* [5]) to secure more than 400,000 members by March 1933.[6] At the same time the 1932 figure of 6,619,557 members of the trade unions, including 4,894,852 members in the Free (Socialist) Trade Unions (*ADGB*), was not overlooked.[7] The extensive funds and properties of the unions could be utilized for the broader program of creating the "new community" during the period when funds for this and other purposes were scant. It was feared, however, that a too sudden destruction of the unions "for which there was no immediate substitute" might result in an undesired reaction "at a revolutionary and dangerous period".[8] But, if this desirable "substitute" could be found, it would offer an effective means for directing the workers, once they had been placed under National Socialist control.

These considerations explain the developments which began with the dissolution of the trade unions after the celebration of National Labor Day on May 1, 1933.[9] The policy of co-ordination received its first application on May 2, with the Free Trade Unions as the victims.[10] Their funds were confiscated, their quarters were occupied, their leaders were arrested, and persons commissioned by the *NSBO* were placed in charge. Similar measures were later applied to the Chris-

[5] The first units were organized in certain workshops in Berlin in 1928, supposedly to encourage collective action in voting for members of the works councils, but primarily to secure votes for National Socialist candidates. Later these cells were combined to form the *NSBO*, a division of the Party.

[6] Gerhard Starcke, *NSBO und deutsche Arbeitsfront* (Berlin, 1934), 26.

[7] L. Daeschner, *Die deutsche Arbeitsfront* (Munich, 1934), 4.

[8] *Der Sinn des Gesetzes zur Ordnung der nationalen Arbeit*, 7.

[9] The explanations given for this action were the tendencies of the various unions to create and maintain "cleavage" among the *Volk*, and also the corruption and waste of many union officials. See, for example, W. Schuhman and L. Brucker, *Sozialpolitik im neuen Reich* (Berlin, 1934), 490 *et seq.*; Karl Sell, *Adolph Hitler und Staatsrat Ley zum Recht der Arbeit* (Munich, 1933), 13 *et seq.*

[10] C. B. Hoover, *Germany Enters the Third Reich* (London, 1933), 140-145; Konrad Heiden, *A History of National Socialism* (New York, 1935), 302-305; M. S. Wertheimer, "Economic Structure of the Third Reich", *Foreign Policy Reports*, vol. X, No. 15, 184-185.

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tian and Liberal Unions. Although the reported "acceptance and acquiescence" on the part of these unions have been properly subjected to critical examination, on May 6, Dr. Ley, the leader of the Committee on Action, charged with carrying out the coördination program, was able to report that all the socialist worker and employee unions had submitted unconditionally. At its first meeting on May 10, the Labor Front presented itself as the true successor of the trade union federations and, with Adolph Hitler as its "guardian" (*Schirmherr*), moved rapidly into the orbit of National Socialism.

The next step was to provide a new internal organization. On June 28, the Bureau for Organization of the German Labor Front announced that the twenty-eight original workers' unions had been reduced to fourteen. In so far as the liquidation of the old unions had not been completed, the members were transferred, with or without their approval, to the newly arranged groupings. The same process, although begun a little later, was applied to the employee unions in Germany. Out of the tangle of organization, liquidation and transfer nine employee unions emerged. Traditional lines of cleavage were not entirely ignored in determining the bases for the division of workers and employees among the unions. By the transfer of memberships from the old unions and the later admission of individual members, the size of the new unions grew rapidly and reached a very high figure at the end of the year.[11] While the voluntary basis of the Labor Front was recognized, very effective pressures were brought to bear to secure new members.[12]

[11] Excluding those listed as "individual members", the membership of the workers' unions had increased from 3,364,000 on May 1, 1933, to 7,199,439 on Dec. 31, 1933. The two largest unions were the German Public Service Workers' Union with 1,339,987 members and the German Metal Workers' Union with 1,028,791 members at the latter date. During the same period the membership of the employee unions increased from 1,268,578 to 1,933,453. *Wirtschaft und Statistik*, 1934, 2. Februar-Heft, 98-99.

[12] This pressure ranged from the appeals to "duty" to threats made by local leaders, in at least two meetings which the writer attended in December 1933, that Labor Front membership would be necessary in order to secure work in the future.

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Although the Labor Front was hailed as the National Socialist substitute for the trade unions, it was not to be recognized as their legal successor. Despite the fact that the membership of the trade unions was taken over bodily, and despite the confiscation of funds, the courts refused to accept the principle of continuity and assumption of legal liability. The National Labor Court held on February 28, 1934, that the Labor Front was not to be designated as the "legal successor of the trade unions", basing its decision upon the reduction in number of affiliated unions from twenty-eight in the *ADGB* to fourteen in the Labor Front, the substitution of the "leader principle" for "the previously existing elective principle" and the enactment of the law of May 19, 1933, which deprived the trade unions of their right to make collective contracts.[13] In the eyes of the court, similarities in membership and the utilization of trade union properties were factors of no particular significance.

A separate Federation was planned for the handicraftsmen, retailers and tradesmen. Out of an organization which had been originally affiliated with the *NSBO* there emerged on December 15, 1932, the "Political Federation of the Middle Business *Stand*". This Federation, in turn, was dissolved in September 1933 and was replaced by the National Socialist Handicraft, Trade and Business Organization (*NSHago*) in the Party and by the General Federation of Handicraftsmen, Retailers and Tradesmen in the Labor Front.[14] Of these two groups the *NSHago* included only Party members, whereas the membership of the Federation included both Party and non-Party members.[15] The actual status and rôle of this latter

[13] It appears that on June 12, 1933, the Trade Union Secretary of the Union of Public Service Workers was dismissed by the "County" Leader of the *NSBO*, without any previous notice. Insisting that the new German Public Service Workers' Union in the Labor Front was the legal successor of the old union, and complaining of a breach of contract, the dismissed official brought action to secure the salary which he claimed was due him. The court refused to recognize his claim. *Deutsche Juristen-Zeitung*, April 1, 1934, Sp. 454-455.

[14] See the ordinance issued by Dr. Ley in Daeschner, *op. cit.*, 21-22. Further admission into the *NSHago* was forbidden by this ordinance. *Ibid.*, Sec. 4.

[15] *Verbaende und Gewerkschaften in der deutschen Arbeitsfront* (Berlin, 1936), 10.

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organization remained in question throughout 1933, although the officials busied themselves with organizing activities.

Toward the autumn of 1933, prompted, no doubt, by types of "encouragement" which could be neither overlooked nor avoided, various employer organizations began to filter into the Labor Front. The newly created "Labor Community" of the German Private Banks and the Central Federation of German Bankers declared for entry during the first days of October, to be followed shortly by the Entrepreneur of the German Traffic Enterprises and the Association of Employers of Paper Processing Industries.[16] The joint appeal of the Ministers of Labor and Economics and of the Leader of the Labor Front on November 27, 1933, to "all German workers of brain and brawn" to enter the Labor Front was followed on December 1 by the "voluntary" dissolution of the National Federation of German Employers,[17] a federation composed of several hundred affiliated groups. Since further acceptance by the employer unions of the Labor Front was impossible, the employers who later became members joined as "individuals". It is evident, however, that the employer groups were slow to act and that the nature of the actual structure of the Employer Federation, envisaged in the Labor Front before the new organization in 1934, was never clear.

A similar lack of clarity existed concerning the persons who were engaged in the liberal professions (*freien Berufe*). According to pronouncements from official quarters, the persons engaged in intellectual occupations were to constitute a kind of fifth pillar of the Labor Front.

By the late autumn of 1933, the Labor Front had assumed, on paper, a semblance of form. Workers, employees, employers, handicraftsmen, tradesmen and retailers, as well as persons in the liberal professions, were to constitute the five major Federations.[18] Of these only the first two fully materialized. In

[16] Daeschner, *op. cit.*, 20-21.

[17] The *Reichsverband* (*Reichsstand*) *der deutschen Industrie* lived on, however, in more than spirit. The technical and industrial organizations of employers were not affected by dissolution of the protective associations.

[18] Note the organization chart in the official *NSBO* publication, *Der Betrieb*, Nov. 1933, 12-13.

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this tentative structure of the Labor Front the leader principle was applied from top to bottom. At the head stood the Leader of the Reich, who was the Guardian of the Labor Front; below him was the actual leader. Two councils possessing purely advisory functions were created.[19] Furthermore, each of the Federations—that is, the General Federation of German Workers and the General Federation of German Employees—was headed by an appointive leader who was to be assisted by two advisory councils. Below, there were in the district, "county" (*Kreis*) and local territorial areas various leaders appointed in each instance from above.

Initially the major function of the Labor Front was, as Dr. Ley expressed it, to be "the education of all laboring Germans in the spirit of the National Socialist State." In order to achieve this end, national bureaus for the press, propaganda, youth and education were charged with such vague duties as "instilling a community spirit in the broad masses of the people" and "creating a new attitude toward occupations."[20] In the Bureau for *staendische* Organization (*Amt fwer staendischen Aufbau*), which spoke in general terms of the coming corporative development in Germany,[21] were centered some of the hopes of those who had read all and not merely a part of Feder's original program. The Bureau for Social Affairs instituted the legal aid offices to furnish advice on wage and employment questions, while an independent Legal Division represented the Labor Front in the courts. The recognition of the importance of leisure time for building favorable attitudes was evidenced by the establishment of *Kraft durch Freude* in November 1933. Technically a separate organization, though under Labor Front direction and leadership, *Kraft durch Freude* through supervised vacations, sports,

[19] Starcke, *op. cit.*, 79.

[20] Claus Selzner in *Der Deutsche*, Sept. 2, 1934.

[21] Max Frauendorfer, *Der staendische Gedanke im Nationalsozialismus* (4. Auflage, Munich, 1933) and *Was ist staendischer Aufbau?* (1933). In some quarters the belief persisted that the Labor Front was to furnish the agency through which the occupational groups were to be organized "in keeping with the Italian precedent". W. Roessle, "Staendestaat und politischer Staat", *Die Tat*, May 1934, 104.

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theater and music was to direct the attention of participants from the setting sun to the morning star of National Socialism.

As might be expected, there was considerable vagueness concerning the duties of the various officers. This uncertainty led to a number of acts on the part of subordinate officers, including promises to compel employers to pay certain minimum wages, which were later to be classified as "unauthorized". Furthermore, the admission that developments would have to be gradual indicated a lack of any unified and positive program. At first the resentment against the new officials of the Labor Front was pronounced, and the openly expressed sentiments of members of the workers' unions showed the effects of several decades of trade union influences. Part of this hostility arose from the fact that the new leaders possessed neither the social background nor the ability to inspire confidence which had characterized the subordinate leaders of the former trade unions.[22] Moreover, the rumblings of discontent from below often encouraged the new leaders in the local areas to make promises incapable of fulfilment, a fact which did not tend to increase their prestige. Tentative as were these efforts, they represented the initial attempts to organize the "workers of brawn and brain in the Third Reich".

II

On January 25, 1934, Dr. Ley, of the Political Organization of the Party, issued an ordinance which provided for the complete reorganization of the Labor Front.[23] For the existent divisions into unions there were to be substituted "organic groupings". Each establishment, the establishment being the basic unit,[24] was to constitute a works community

[22] In one area a young County Leader of a workers' union resorted on two occasions to the ruse of allowing an old member of a former trade union to speak for him. The members thought that the leader was the County Leader and addressed him as such. The real County Leader informed the writer that this method was necessary for "organizing purposes". *Cf.* W. T. Ham, "Labor under the German Republic", *The Quarterly Journal of Economics*, vol. XLVIII, Feb. 1934, 224.

[23] Daeschner, *op. cit.*, 41.

[24] On "establishment" see Walter Kaskel, *Arbeitsrecht* (3. Auflage, Berlin, 1928), 72-73, 286-287; also *cf.* W. Siebert, *Das Arbeitsverhaeltnis in der Ord-*

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(*Betriebsgemeinschaft*), provided that it included a responsible leader and ten actively employed persons. All individuals in the establishment, both Party members and non-members,[25] whether employers, employees or workers, were grouped together without regard to their respective occupations. If the size of the membership justified, there could be a grouping into cells and blocks, the former being the largest unit with a minimum of two blocks. Establishments with less than ten employed were to be organized by districts into blocks and cells together with members of the Labor Front who were not active in an establishment.[26] All the works communities of the same "economic branch" were to be joined together to form National Works Communities which, in turn, included the hierarchy of regional works, district works, "county" works and local works communities. In the Reich provision was made for eighteen National Works Communities, namely: Textiles, Nourishment and Enjoyment, Clothing, Building, Wood, Iron and Metal, Printing, Chemistry, Transportation and Public Services, Liberal Professions, Paper, Mining, Stone and Earth, Agriculture, Leather, Banking and Insurance, Trade and Handicrafts.[27] The membership of the earlier groupings was to be transferred to these new organizations,

nung der nationalen Arbeit (Hamburg, 1935), 42-52. Each undertaking with branches in various localities was divided into a number of establishments corresponding to the number of places where responsible leaders paid the salaries, wages, etc.

[25] Party members were also separately organized into *NSBO* and *NSHago* cells.

[26] *Organisation der deutschen Arbeitsfront* (Official Plan, 1934), 20-23.

[27] The term "national works group" instead of "community" was used until March 1934. *Verbaende und Gewerkschaften in der deutschen Arbeitsfront*, 11. Nineteen such groups were originally planned. *Soziale Praxis*, Feb. 1, 1934, Sp. 1. Herein lies the explanation for the error repeated even in standard National Socialist books, to the effect that there are at present nineteen National Works Communities. Note, for example, O. Meissner and G. Kaisenberg, *Staats- und Verwaltungsrecht im dritten Reich* (Berlin, 1935), 328.

It must be noted that "economic branch" allowed for division in part on the basis of the raw material (iron and metal, stone and earth, wood), in part according to the economic activity (transportation and public services, banking and insurance, trade) and in part according to the nature of the establishment (handicrafts and liberal professions).

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the old officials to receive preference in the assignments to new posts.

The territorial organization of the Labor Front followed the same plan as that of the National Works Communities, with the resulting horizontal structure in each area which cut across the Communities. In both instances the territorial divisions of the Party were followed. The control of the Labor Front was exercised by the Political Organization (*PO*) of the Party through the *NSBO* and *NSHago*. The Staff Leader of the *PO*, Dr. Ley, continued as the Leader of the Labor Front and of *Kraft durch Freude*, and there was a similar interchange of positions in the smaller territorial units.[28] In general, the *NSBO* was given jurisdiction over National Communities nos. 1-16 (with the exception of no. 13, Liberal Professions),[29] while the direction of the *NSHago* was limited to nos. 17 and 18, Trade and Handicrafts. The governing agencies were necessarily altered to correspond to the structural changes. Both in the Small and Large Conventions,[30] the advisory councils provided for originally in the *DAF*, changes were made. The National Works Communities were headed by responsible leaders, each of whom was to be assisted by an advisory council.

The reason officially given for the new organization in the Labor Front was that the previous scheme recognized a differentiation between workers, employees and employers which could not be reconciled with the National Socialist program of "community building".[31] The result was a merging of individuals into groups which either had nothing to do with their occupations [32] or, in so far as the workers were concerned,

[28] The term "Leiter" is used for Party officials, "Walter" for Labor Front officials and "Wart" for *Kraft durch Freude* officials. The same person may be a *Gauwalter, Gauleiter* and *Gauwart* in the Labor Front, Party and *Kraft durch Freude*, respectively.

[29] *Der Deutsche*, Sept. 1, 1934. Dr. Ley, the Leader of the Labor Front, retained originally the leadership of National Works Community no. 13.

[30] For the composition of the Small Convention, see *Organisation der deutschen Arbeitsfront*, 13.

[31] Dr. Ley in *Voelkischer Beobachter*, May 16, 1934.

[32] *Soziale Praxis*, Feb. 1, 1934, Sp. 136.

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claimed a closer relationship to the industrial union proposed, and only partially realized, before 1933.[33] In other respects the National Works Communities varied in almost every conceivable item. They ranged in size from the largest, Iron and Metal, to the smallest, Leather, which contained originally only one-fifteenth as many members. Textiles included the largest percentage of feminine workers, whereas Banking and Insurance and Liberal Professions showed a preponderance of male employees. In short, the various National Works Communities presented the picture of a variegated set of combinations of workers, employees and employers.

The organizers of the Labor Front were early confronted with two discernible tendencies and two lines of development. On the one hand there was the organization according to the economic branch into which the establishment happened to fall; on the other hand there was the retention of the organization according to occupation. The one, the Works Communities, ran vertically through the local groups, counties, districts and regions of the Labor Front; the other ran horizontally through the Works Communities of the *DAF*. Various attempts were made to reconcile the conflicts which inevitably arose. But despite the many initial efforts looking toward a greater emphasis upon the vertical organization, the Representative of the Leader, Rudolph Hess, and Dr. Ley issued a joint announcement on May 31, 1934, which, "recognizing that the organization of the Labor Front must develop in a gradual way", provided that "the National Occupational Groups of employees would be transferred to the local groups in the Labor Front only after the latter had been so developed and organized that the transfer of membership would take place under the proper guarantees of previously acquired rights and the complete protection in economic matters."[34] Until this transfer of membership had been arranged all interference

[33] Ludwig Heyde, "Beruf und Klasse", *Handwoerterbuch des Gewerkschaftswesens* (2 vols., Berlin, 1931), I, 174.

[34] *Der Deutsche*, Sept. 2, 1934.

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with the National Occupational Groups of employees was to be prohibited.[35]

After the reorganization, the members of the Labor Front could be divided into two types, "individual members" and "members through incorporation". The "individual members" [36] included all members of the former trade unions, the members of the unions in the *DAF* before the reorganization and those who had been received individually into the organization. Persons who were enrolled in an organization which was incorporated into the Labor Front were listed as "members through incorporation".[37] In the beginning the Reich Food Guild (*Reichsnaehrstand*) and the National Culture Chamber were the two organizations which stood in a corporate relationship to the Labor Front. Perhaps the most important distinction between the "individual members" and the "members through incorporation" lay in the privileges which the former received in *Kraft durch Freude*. Without the necessity of paying a fee or going through the formalities of special admission the "individual members" were recognized as members of the *Kraft durch Freude*. "Members through incorporation", however, were not entitled as such to full participation.[38]

[35] The efforts and only partial success through 1934 of National Works Community no. 13, Liberal Professions, to adjust this problem of a vertical organization, yet one which would allow for occupational differences, were illustrative. The physicians were "incorporated", while for different reasons the lawyers and teachers remained outside. See Carl Holdenkamp, "Die Deutsche Aerzteschaft im berufstaendischen Aufbau", *Soziale Praxis*, April 26, 1934, Sp. 502; *Deutsche Juristen-Zeitung*, Nov. 15, 1934, Sp. 1401; Hadrich, "Zum Aufbau der Reichsbetriebsgemeinschaft der freien Berufe", *Deutsches Aerzteblatt*, Aug. 25, 1934, 831 *et seq.* The major reason given for the failure to allow the teachers to be included in the Labor Front, that is, the civil servant status of a large percentage of them, explains why the other civil servants were not incorporated. On the early organization, see *Deutsche Gemeinde Beamten-Zeitung*, Nov. 4, 1933, 614; *National-Sozialistische Beamten-Zeitung*, Feb. 1934, 93. The agreement with the Labor Front is discussed in *Soziale Praxis*, March 1, 1934, Sp. 261.

[36] Originally a distinction was drawn between (1) union members, (2) individual members and (3) members of organizations which were incorporated into the Labor Front. Starcke, *op. cit.*, 74.

[37] *Organisation der deutschen Arbeitsfront*, 68.

[38] *Ibid.*, 69.

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In general, any "working German" (worker, employee or employer) was qualified for membership provided that he was of Aryan descent and that he did not fall under certain legal or occupational disqualifications. No person, furthermore, who was permanently incapable of earning a livelihood was acceptable. The leader principle, coupled with the wealth of grounds for the exclusion and dismissal of members, left ample room for a full exercise of administrative discretion.[39]

If a more detailed consideration of the expansion of its activities may be left largely for later attention, some mention must be made of the duties conferred upon the Labor Front by the National Labor Law which went into effect on May 1, 1934.[40] Among others, the *DAF* played a rôle in the nomination of members for the standing advisory councils of the trustees of labor, and the trustee was required to choose three fourths of the members from the lists submitted by the Labor Front.[41] It participated, likewise, in the selection of the assessors of the courts of social honor created by the Act,[42] and in the designation of the assessors of the national labor courts.[43] The confidential men, provided in all establishments with twenty employed persons, were required to be members of the Labor Front.[44] So far and no farther was provision made for the *legal* participation of the *DAF* in the administration of the National Labor Law.

By the fall of 1934 the Labor Front had assumed the general structure which it possesses today. The offices in the *DAF* had been filled almost exclusively by members of the *NSBO* and *NSHago,* both divisions of the Party. The lines of control from the top to the bottom of the organization were becoming more clear-cut. Innumerable orders and instructions which

[39] *Ibid.*, 72.

[40] *Act for the Organization of National Labor.*

[41] *Ibid.*, Art. 23, Sec. 1.

[42] *Ibid.*, Art. 41, Sec. 2.

[43] *Ibid.*, Art. 66, Sec. 2. The organization and procedure of the national labor courts were not fundamentally altered by this statute. For a brief summary of the most important changes see W. Herschel and G. Bergemann, *Neues Arbeitsrecht* (Leipzig, 1934), 30 *et seq.*

[44] *Act for the Organization of National Labor*, Art. 8.

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covered the minutest details of the work of the local offices issued from Berlin. Even the similarity in speeches of officials suggested a common origin. That there should have been some "irresponsibility" during the early days of the Labor Front and during the period of reorganization was to be expected. But as the organization was perfected, the local officials found the scope of their activity outlined and circumscribed in more definite forms by regulations from above. Another hierarchy had been forged and was being tempered in an authoritarian state.

Class differences in the Labor Front, although more submerged than during 1933, were still obvious. Not only had the employers shown a delicacy about entering this organization but they evidenced an even greater unwillingness to accept positions in it.[45] Furthermore, several decades of trade union consciousness had not been destroyed by two years of organization. And, in fact, it was fear of this heritage expressed in some vague statements about the building of a "real community" which led to the changes in the original organization. The first union of workers had witnessed many "violent socialist outbursts", even when conducted under proper auspices, and it was felt that the new groupings would furnish a better insulation against this sentiment. There existed a suspicion on the part of the employers and a hostility on the part of many former trade union members, with the question of a final adjustment between these groups in the Labor Front a matter of conjecture.

It was significant that the chief objections to the extension of the functions of the Labor Front should have come from the *Reichsstand der deutschen Industrie* and the Ministries of Labor and Economics. In these quarters arose the chief opposition to the extension of Labor Front control in labor law administration and the greatest skepticism of the Labor Front proposals for a *staendische* development in Germany. These latter proposals furnished food "for mental speculation in

[45] In 1934, one National Works Community Leader in a Community which consisted of a considerable percentage of former trade union members spoke in particular of this difficulty.

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another geological age", as one critical official in the Ministry of Labor stated. It was likewise significant that despite this opposition and skepticism there was a slight broadening of the powers of the Labor Front, especially in the field of labor administration. The fact that the ultimate direction of the Labor Front lay in the hands of the Party, and that the final jurisdiction over most fundamental questions in labor matters remained in the hands of the labor trustees or other state agencies, did not minimize the play of group pressure around the organization. Recent developments, although they have eliminated some of the uncertainties as to the relationship of competing groups, have given only a partial answer to the question of the final rôle which the German Labor Front is to play.

III

While it is impossible to speak with any degree of finality concerning the legal nature of the Labor Front, the October 24, 1934 decree[46] of the Leader and Reich Chancellor somewhat clarified the situation. Without conferring any definite legal or corporate status this decree guaranteed equality to former members of the trade unions and employers' associations; it stated its objective to be the creation of a true "Folk's Community of all Germans" and recognized the Labor Front as a subsidiary organization of the Party as determined by the Law for Guaranteeing the Unity of the Party and State.[47] In addition, it assured the continued control of the National Organization Leader of the Party as the Leader of the Labor Front and the privileged positions of the *NSBO* and *NSHago,* as well as the preference to be accorded the *SA* and *SS* in the selection of subordinate leaders.[48] Finally, the decree outlined broadly the duties which the Labor Front was to perform and contained a number of miscellaneous provisions which gov-

[46] A copy of this decree may be found in A. B. Krause, *Organisation von Arbeit und Wirtschaft* (Berlin, 1935), 169-170.

[47] Art. 1-3. See the Law of Dec. 1, 1933, *Reichsgesetzblatt* (*RGBl*), I, 1016 and *ibid.*, 1935, I, 502.

[48] Art. 4. The *SA* (*Sturmabteilung*) and the *SS* (*Schutzstaffel*) are the two most important uniformed organizations of the Party.

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erned the control of funds, the territorial and professional divisions in the *DAF* and the relationship to *Kraft durch Freude*.[49] Issued because Labor Front leaders desired a clarification of their position, the decree formally recognized the *status quo*.

The developments up to the summer of 1936 offer ample testimony that the organization of the Labor Front has undergone considerable internal transformation. With the crystallization of the organization the final liquidation of the nine employees' unions was announced on January 1, 1935.[50] The National Occupational Groups which had cut across the Communities were also completely eliminated on November 1, 1935,[51] and their remaining functions were transferred to the National Works Communities. After this change the conflict between the horizontal and vertical scheme of organization which had caused difficulties previously was finally settled in favor of the latter—except, perhaps, in so far as the territorial agencies of the *DAF* provide something of a horizontal basis. The Large and Small Conventions ceased to function after the Leipzig Agreement in 1935.[52] The earlier regional divisions which corresponded to the trustee of labor districts have been abolished,[53] and the standing advisory councils in the National Works Communities have been either altered or allowed to vanish.[54]

Certain of the former national offices have been abolished, divided or fused with others, while new ones have been added. The most conspicuous absence today is the Bureau for *staendische* Organization. Emerging early in the *staendischen* craze which swept Germany, this Bureau was never able, despite its efforts, to dissociate its proposals to organize Germany along corporate lines from the *staendischen* ideas of

[49] Arts. 5-9.

[50] *Verbaende und Gewerkschaften in der deutschen Arbeitsfront*, 11.

[51] Krause, *op. cit.*, 59-61.

[52] *Ibid.*, 63; see below, pp. 556 *et seq.*

[53] *Ibid.*, 65, 151 *et seq.*

[54] National Works Community no. 18, Handicrafts, has no longer a standing council. The Council of National Works Community no. 17, Trade, remains but meets irregularly at the call of the Leader.

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Othmar Spann.[55] With its demise there was eliminated the one agency in the Labor Front with a positive (as distinguished from the "developmental") program for social and, perhaps, economic reorganization.[56]

An innovation termed by the Labor Front officials "the capstone of their edifice" has been the establishment in 1936 of a separate system of courts consisting of a Supreme Court and district courts to supplement those created by the National Labor Law. These courts are to serve for the trial of both members and officials of the *DAF*, in accordance with a "Code of Honor" and a "Disciplinary Code".[57] The unwritten Code of Honor allows for action against members on such vague grounds as "unsocial behavior", lack of feeling for comradeship, "treason against the community of workers" and the nonpayment of dues.[58] The Disciplinary Code, which, in addition to the Code of Honor, applies to the officials of the Labor Front and *Kraft durch Freude*, is equally brief[59] and allows for punishments which range from temporary or permanent removal to fines and warnings.[60] Party control is assured through the necessity of the assent of the Chief Justice of the Party courts to the appointments of the Leader of the Labor Front.[61] As a consequence of the creation of these

[55] In *Der wahre Staat* (rev. ed., Jena, 1931) and *Gesellschaftslehre* (Leipzig, 1930). See also W. Heinrich, *Das Staendewesen* (Jena, 1932) and the periodical *Staendisches Leben*. The various explanations for the abolition of the Bureau ranged from the statement that "its work had been completed" to the insistence that "its ideas were opposed to National Socialism". A common observation is the comment of the Leader of the Office for General Organization of the Labor Front to the effect that "Hitler wollen wir und nicht Othmar Spann." Claus Selzner, *Die deutsche Arbeitsfront* (Berlin, 1935), 14

[56] The earlier writings and speeches of its leader, Dr. Max Frauendorfer referred to above, may be compared with his own obituary, *Idee und Gestalt der staendischen Neuordnung* (Berlin, 1935).

[57] Assistant Chief Justice Hans Koch, in *Deutsche Arbeitskorrespondenz* April 23, 1936. For a list of and sound comment on the various "special" courts in Germany, see Karl Loewenstein, "The Law in the Third Reich" *Yale Law Journal*, March 1936, 808-809.

[58] *Ehren- und Disziplinarordnung der DAF*, Art. 2.

[59] *Ibid.*, Art. 9.

[60] *Ibid.*, Arts. 14 *et seq.*

[61] *Ibid.*, Art. 29.

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courts an individual may be subjected to two trials and punishments for the same offense, once in the Honor courts created by the National Labor Law and once in the Labor Front courts.[62] Although the most severe penalty which can be inflicted upon an ordinary member in the *DAF* is dismissal, starvation is an effective sanction in any state. At the same time these courts offer an avenue for the elimination of some arbitrary actions on the part of officials and serve to forge another link in the control over the membership of the *Arbeitsfront*.

The number of full time officials who do not as yet have a civil service status is said to exceed 40,000,[63] with the claim of 1,500,000 additional voluntary and unpaid officials who are employed largely in the local divisions and establishments. In any case, about 10 per cent, or approximately 30,000,000 *RM*, of the annual budget goes for salary purposes.[64] Emphasis is placed upon youth in the selection of leaders for whose training seventeen institutions had been established by the fall of 1935. While a number of former trade union members hold posts in the local divisions, few instances can be found where they have been placed in the national offices.[65] If it is maintained, and with considerable evidence, that many of the strongholds of the trade unions and communists are now the greatest hotbeds of National Socialism, nevertheless there has been great caution in the distribution of the full time salaried positions among the new converts.

[62] The procedure is covered fully in an elaborate *Verfahrensordnung zur Ehren und Disziplinarordnung der DAF*. Up to July 1936, courts had been set up only in certain districts and only one decision which involved a dismissed official had been handed down by the Supreme Court. It is worth noting that Dr. von Renteln, former Chief of the German Diet of the Chamber of Commerce, is the first Chief Justice.

[63] The estimates of Labor Front officials vary widely. The figure has been placed as low as 20,000.

[64] Figures submitted by the *Schatzamt*. The Treasury, while directly responsible to the Leader and under the general supervision of the Treasury of the Party, has a final jurisdiction in the preparation of the budget and in the distribution of funds.

[65] In three National Works Communities no individual member could be pointed out who had been a trade union member through 1932.

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The estimated membership of 23,000,000 in the Labor Front at the beginning of 1935 is possibly somewhat larger at the present time.[66] The most important corporate members up to 1936 are the National Culture Chamber, the Federation of National Socialist German Jurists,[67] the National Socialist Physicians' Federation, the Reich Food Guild [68] and the Organization of Business Groups.[69] The National Socialist Teachers' Federation and the National Federation of German Civil Servants have not been so included for the reasons indicated, although both Federations have made special arrangements for their members with *Kraft durch Freude*. The meaning of corporate membership is shrouded with more uncertainty than ever, in view of the fact that the National Culture Chamber has made no payment in the past to the Labor Front [70] and the fact that non-corporate members can secure *Kraft durch Freude* privileges. Actually, corporate membership remains largely a gesture of organizations which wish to retain their separate identities for economic and professional reasons, factors which will continue to furnish a barrier to the all-inclusive pretensions of the Labor Front.

[66] W. Herschel, *Neues Arbeitsrecht* (Leipzig, 1936), 33; Dr. Ley in *Voelkischer Beobachter*, Sept. 15, 1935. These figures do not furnish any information as to the type of member. Officials in the Bureau for Social Affairs estimate that 80–90 per cent of those eligible for admission are now included and that there is probably a "larger percentage of eligible employers now enrolled than former employees and workers." This latter observation can possibly be explained by the secrets of corporate membership.

[67] This Federation received corporate membership in 1935. Its official name was changed in 1936 from the *Bund Nat. Soz. Deutscher Juristen* to the *N. S. Rechtswahrerbund. Die nationale Wirtschaft*, June 5, 1936, 161 *et seq.*

[68] For the Agreement of Oct. 6, 1935, between the Reich Food Guild and the Labor Front, see Krause, *op. cit.*, 174-175.

[69] See below, pp. 555 *et seq.*

[70] The representative of the Special Trustee for Labor in the National Culture Chamber, however, indicated that a small payment per member might be expected in the future because of the importance of the legal aid offices. The usual arrangement is for the corporate body to make a monthly payment of from 30–50 *Pf.* for each member. Instances may be cited where the dues for members of these corporate organizations are lower in the higher brackets than the dues for individual members in the Labor Front; the opposite holds true for persons with lower incomes.

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The early period, when individual members were paying dues according to a plan devised by the Labor Front and others were paying the old trade union dues, came to an end on July 1, 1934,[71] as a new schedule was framed and put into effect. Exclusive of certain special classes, the dues range from 60 *Pf.* monthly for each person receiving up to 40 *RM* monthly to 12 *RM* monthly on all incomes over 740 *RM*. The average payment per member is 1.40 *RM* monthly, with approximately 80 per cent of the total income from dues derived from persons with an income of less than 180 *RM* monthly.[72]

With emphasis upon its rôle to provide for the social and political education of its membership, the Labor Front issued an order in the fall of 1935 for the centralization of control of the entire press in the Press Office. This mandate, which affected one of the most elaborate parts of the National Socialist propaganda machine, was designed to secure a more careful political orientation of the four types of publications involved, namely: (1) the *political-ideological press* which consists of the semi-monthly *Arbeitertum* designed largely for industrial labor, and *Der Aufbau,* for artisans and tradesmen;[73] (2) *information sheets* which are published bi-monthly by the National Works Communities for use at Labor Front meetings for the benefit of Labor Front officials and members of confidence councils; (3) *shop magazines* which deal largely with the activities of individual establishments by which they are issued;[74] (4) the *occupational press* which consists of over seventy-five occupational journals published largely by the National Works Communities.[75] The political contents of

[71] *Frankfurter Zeitung,* Jan. 21, 1934.

[72] Figures furnished by officials in the *Schatzamt. Cf. New Forms of Community Work* (Berlin, 1935), 22. The latter consists of various materials which deal with the Labor Front, translated and issued by the National Labor and Economic Council.

[73] The official daily paper of the Labor Front, *Der Deutsche,* has suspended publication.

[74] Due to encouragement from the *DAF* a number of these magazines have been added since April 1935 in establishments which employ over 500.

[75] See, for example, *Grundstein, Das Bauwerk, Bau* and *Jungvolk vom Bau,* all issued by National Works Community no. 4, Building.

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these magazines and papers are critically reviewed by the Press Office, whereas the technical articles are passed upon by the Office for Labor Management and Professional Training.

In addition to the control of practically the entire occupational press, the Labor Front directs the professional and occupational schooling of its members.[76] Whether the type of training and professional ethics have been improved by taking this work out of the hands of the horizontal occupational groupings cannot be easily proved or disproved, but certainly the present arrangement has been followed by a new emphasis upon the *duty* of the individual to be efficient and, above all, to avoid the waste of raw materials.

The *Kraft durch Freude* which was created in November 1933 had gradually evolved by the end of 1935 into an extensive organization. Popular courses for the physical training of the masses at cheap rates, where military values are not ignored, may not have made Germany sport-conscious but the trend is in that direction.[77] In 1934, tours of usually one week's duration and at extremely low rates were arranged for over 2,000,000 persons. In the same year more than 100,000 are estimated to have participated in the hiking tours.[78] Attention has been focused upon the present accessibility of the theater, opera, concert, lectures, etc., to persons in the low income brackets. It may be as easy for the critic to underestimate the psychological effects and actual material contributions of this set of agencies in Germany as it is for the National Socialist to forget certain analogies between *Kraft durch Freude* and the Italian *Dopolavoro,* in regard to both purpose and functioning.[79]

[76] This work is supervised by the Bureau for Labor Management and Vocational Training. Particular emphasis has been placed upon the training of the artisans.

[77] This activity in sports was really started in 1921 by the Federal Council on Physical Culture.

[78] There is strong criticism from hotel and pension owners who are required to furnish accommodations and meals at fixed rates.

[79] *Kraft durch Freude* officials contend that the organization owes nothing to the *Dopolavoro* in its inception or activities. For a brief estimate of its work see Fritz Ermarth, *The New Germany* (Washington, 1936), 140 *et seq.* It was

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Physical well-being and questions of racial purity are considered a part of the broader problem of public health,[80] and efforts to improve the health, especially in the latter regard, have resulted in the existence of ill-defined jurisdictions.[81] The care for the unemployed, invalids, the sick, the injured and dependents occupies the attention of nearly every office in the Labor Front in one respect or another. For these general purposes approximately 34 per cent of its total expenditures are advanced.[82] The Labor Front is one of the largest insurance agencies in Germany. Nearly 800 of the 1400 employees of the Treasury are engaged in the general activities of *Unterstuetzung*. A considerable portion of these, needless to state, are employed to meet the former trade union financial liabilities which were largely assumed by the Labor Front.

In the decree of October 24, 1934, the Labor Front was specifically authorized to bring about agreements between the "leaders" and "followers" of the establishments and to reduce the number of cases which could be appealed to the appropriate state authorities.[83] At the same time it was clearly recognized in the decree, and expressly stipulated later by the Leader of the *DAF*, that there was to be no replacement of or interference with any of the authorities established by the labor laws.[84] As a consequence the activities of the Labor Front since 1934 have been confined within the legal channels defined by the National Labor Law. The political and legal instruction of the confidence councils has been taken over by the

self-supporting in 1935 with the exception of 17,000,000 *RM* contributed by the *DAF*. However, a number of facilities were furnished "free", such as telephones, etc., and certain critics insist that the railroads do not "break even", as claimed. A very large percentage of the officials in the local areas are unpaid or perform their duties as *Kraft durch Freude* officials in addition to other official duties.

[80] Bartels, "Betrieb und Gesundheit", *Wege zur neuen Sozialpolitik* (Berlin, 1936), 162 *et seq.*

[81] There are Bureaus for Public Health in the Labor Front, Party and National Socialist Organization for Public Welfare. The National Socialist Federation of German Physicians is also interested in the same field.

[82] See Annual Report by Dr. Ley in *Voelkischer Beobachter*, Sept. 14, 1935.

[83] Art. 7.

[84] *Deutsche Juristen-Zeitung*, Nov. 15, 1934, Sp. 1399.

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Arbeitsfront.[85] In 1935, about 10 per cent of the requests to the Trustee of Labor for Brandenburg to cite individuals before the courts of social honor came through the Labor Front.[86] In view of the limited number of employees in the trustee's office, considerable reliance is placed upon the Labor Front for the collection of statistics and for the reports of violations of the law.[87] Its rôle in the prevention of labor disputes is generally recognized. This is effected in part by the custom of taking individual controversies to the labor courts only after the advice of the legal aid offices of the Labor Front have been consulted. These offices previously mentioned furnish advice to all members on questions of labor law, social insurance and unemployment insurance, and may represent the members before a court. For these purposes separate divisions exist for the "leaders of establishments" and for the "followers". From October 1934 to April 1935, 42,445 disputes over unemployment insurance alone were adjusted here.[88] Questions of general interest which involve working conditions or wage problems are usually considered by Labor Front officials before they are brought to the trustee of labor.

[85] There were no new elections for confidence men in 1936, in accordance with the Law of March 31, 1936. This "law" was issued in order to prevent "any conflict with the Reichstag plebiscite". *Monatshefte fuer N. S. Sozialpolitik*, June 1936, 107.

[86] Estimate of the Trustee's Office. The results of the decisions of the courts of social honor during 1935 may be found in the *Voelkischer Beobachter*, Feb. 15, 1936. A large percentage of these cases involved the leaders of small establishments.

[87] The Trustee of Labor for Brandenburg has only fifteen full time employees under his jurisdiction. The central statistical office for these purposes in the Labor Front is the Bureau for Social Affairs which assembles all the pertinent information on the operation of the labor laws, their enforcement and violations, the protection of workers, the wage system, child labor and home work. A survey of some 12,200 establishments by the Division for Social Affairs in National Works Community no. 18, Handicrafts, indicated that on May 1, 1936, 23 per cent of the establishments were not adhering to the minimum wage requirements. *Das deutsche Handwerk und seine soziale Lagerung*, Heft 3, 1936, 23.

[88] "Ein Jahr Rechtsberatung der *DAF*", *Deutsches Arbeitsrecht*, 1935, 158 *et seq*. Two officials of the Labor Front and one from a trustee's office estimated that "at least 95% of the potential cases" were settled in this way. *Cf. New Forms of Community Work*, 20.

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As a result of these activities, some of the National Works Communities, such as that for Building, have taken an active interest in the issuance of new wage schedules (*Tarifordnungen* as distinguished from the *Richtlinien*) by the trustees of labor or the Ministry of Labor. A number of these new schedules have followed a petition from National Works Communities, and in some instances have been issued in almost the identical form proposed.[89] Although the emphasis must again be placed upon the discretionary power of the trustee, certain of the National Works Communities have proved effective pressure groups. The continued existence up to July 1936 of approximately 5,000 of the pre-1933 wage agreements (*Tarifvertraege*)[90] leaves ample opportunity for the exertion of such pressure.

The real significance of the adjustments which are being arranged by Germany's chief economic director, Minister of Economics Schacht, is a matter of conjecture. While the controls over business practices, prices, standards of production and other matters have been gradually assumed by the Minister of Economics, continued emphasis has been placed upon "self-government in business". With this announced purpose, "business economy" has been organized in accordance with the Law of February 27, 1934,[91] into a National Group of Industry,[92] subdivided into seven Major Groups, and National Groups of Commerce, Trade, Banking, Insurance and Power Industries. The leaders are appointed by the Minister of Economics. In addition to divisions and subdivisions these groups are also organized territorially with district and national economic chambers which cut across the various vocational groupings and furnish a link with the chambers of commerce and industry. The National Economic Chamber is the chief

[89] A few hasty comparisons have been made between original and revised drafts in National Works Community offices and the final wage schedules as announced.

[90] Estimate of *Ministerialdirektor* Mansfeld in an interview.

[91] *RGBl*, 1934, I, 185.

[92] This Group contains a number of the "indispensable" officials of the old *Reichsverband* and later *Reichsstand der deutschen Industrie*. See *Wirtschaftsgruppe Industrie* (Berlin, 1936), 39-44.

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advisory economic council. In the last analysis the rôle of these agencies, the provision for compulsory membership notwithstanding, is advisory as to economic policies and credit, banking, insurance, tax, foreign trade and other questions.[93]

These were the Groups affected by the Leipzig Agreement of March 21, 1935, arranged by the Ministers of Labor and Economics and the Leader of the Labor Front.[94] As a result a hierarchy of national and district labor councils appointed by the Leader of the *DAF,* and composed largely of officials of the Labor Front, was announced on June 13, 1935. The members of the Advisory Council (*Beirat*) of the National Economic Chamber were to meet jointly with the members of the National Labor Council to constitute a National Labor and Economic Council.[95] Its functions were to consist of "discussion of joint economic and social questions, the establishment of confidential coöperation between all formations of the Labor Front and the reception of notifications by the Government or by the Administration of the German Labor Front." A District Labor and Economic Council, similarly constituted and with corresponding functions, was to be set up in each of eighteen designated districts. In addition, labor committees "consisting of equal numbers of leaders of establishments and followers of the corresponding business branch" were to be created to deal especially with questions "beyond the competence of the individual establishment". In fact, in "all organs and formations of the German Labor Front", leaders of establishments and followers were "to participate in the management and consultation in equal numbers as far as possible."[96] When the confidence councils, in which the leader of the establishment is a member, were added, a "system of collaborative

[93] The changes made in July 1936 in the organization and relationship to other territorial agencies may be found in *Frankfurter Zeitung,* July 9, 1936. These changes were designed to simplify the complex relationship existing between the Economic Groups and the chambers of commerce and industry.

[94] The Agreement is included in *New Forms of Community Work,* 11-13.

[95] For the composition at the end of 1935 see Krause, *op. cit.,* 159.

[96] Agreement, *loc. cit.,* 12.

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organs for the self-government of industry" was announced.[97] Although the development is as yet incomplete, it is absurd to speak of these agencies as providing any real self-government.[98] If these "collaborative organs" were to devise ways and methods of "achieving a more just social balance", the stenographic records of two district labor councils themselves indicate no further progress by the summer of 1936 than generalized discussions of social and political questions.[99] One can certainly agree with a Nazi official "that the finding of the synthesis between the authority of the State and supreme economic leadership on the one hand and social and economic self-administration on the other is the *tremendously difficult task* [italics mine] now imposed on the German Labor Front."[100]

IV

Groups in the *DAF* made two major bids for power during the first three years of the Labor Front's existence. In its early days, when the trade union sentiment was strong and the future of the organization was not clear, the *de facto* exercise of authority in the field of labor administration led to the belief that the Labor Front might play a leading rôle in the regulation of wages, hours and conditions of work. The National Labor Law of 1934 and subsequent labor legislation dissipated these illusions. The constant hope springing from a combination of idealistic and personal reasons that a program of *staendische* organization under the aegis of the Labor Front

[97] The charges of "double representation" of the employers through the compulsory inclusion of the establishments in the National Economic Groups and through "voluntary" membership in the Labor Front are not lacking. This contention, coupled with the recognition of the Secretariat of the National Economic Chamber as "the economic office of the German Labor Front", has led some to read into the Agreement a single motivation and a general importance which it does not deserve.

[98] For a penetrating analysis of this "economic self-government" see F. M. Marx, *Government in the Third Reich* (New York and London, 1936), 138-140; *cf.* F. L. Schuman, *The Nazi Dictatorship* (rev. ed., New York, 1936), 394 *et seq.*, 471, and Ermarth, *op. cit.*, 109-130.

[99] Only certain of the organs envisaged by the Agreement had been created by July 1936.

[100] Wolfgang Pohl in *New Forms of Community Work*, 7.

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could be gradually evolved was to go from the crescendo in early 1934 to the diminuendo in the winter of 1935. Trade unionism, idealism and bureaucratic zeal filled the sails at one period or another but the course was not being charted by Labor Front pilots. The regulation of prices, cartels and foreign trade by other agencies leaves the Economic Groups as excess baggage while the general control of labor and the labor market in the hands of the trustees and the National Bureau for Employment and Unemployment Insurance offers little to read into the Leipzig Agreement. The "higher synthesis" between labor and capital has not been found by unrealistic and non-applicable reflections on "self-government in industry".

Despite these facts the Leader of the Labor Front has not been in error when he characterized the *Arbeitsfront* as the nerve center of the Nazi State. It is the most important agency, not excluding the Party, for feeling the pulse of the German people. As a propagandist organ it is rivaled only by the Ministry of Propaganda. Through preachments and sanctions it has been relatively succesful in its effort to win and hold labor for the Nazis in the face of the decline in real wages. Without question the German Labor Front must be catalogued as an invaluable part of the dictatorial pattern. Nevertheless, somewhere in its bosom there lies the potential threat of earlier forces which have been silenced but not destroyed.

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BRITISH RAILWAYS IN ARGENTINA[1]

ARGENTINA is probably the most important country whose railway mileage is controlled in its major portion by foreign capital. The republic has a total mileage of approximately 40,000 kilometers of which British capital owns and operates 66 per cent.[2] In this paper I shall examine the railway policy of the country with the intention: first, of surveying the conditions under which the earlier railways were constructed and operated by British capital; second, of indicating the lessons to be derived from a study of Argentina's railway history for planning the future development of her transportation system and the nation's place in the world economy; third, of considering some of the social consequences of this migration of capital and management.

I

The most significant single step in the relationship between British railways and Argentina was the passage of the Mitre Law in 1907, which put the relationship of all foreign companies with the government on the same basis. It was a logical outgrowth of previous concessions granted by Argentina to individual companies.

The absence of iron ore and coal, as Professor Tannenbaum has pointed out, set the pattern of Argentina's economic con-

[1] I am under special obligation, in the preparation of this paper, to Dr. James A. Robertson, Managing Editor, *The Hispanic American Historical Review;* Dr. Fred W. Powell, The Brookings Institution; Senor Carlos Garcia-Mata of the Argentine Embassy; Mr. Charles L. Luedtke, formerly Agricultural Attaché to the American Embassy in Buenos Aires; Professor Richard Schofield, of St. John's College; and Miss Elizabeth Cullen of the Library of the Bureau of Railway Economics.

[2] *Estadística de los ferrocarriles en explotación, año 1933,* vol. XLII, Dirección General de Ferrocarriles, 1935, p. 48. Future citations will mention *Estadística* and the year to which the data refer. *Economic Mission to Argentina, Brazil, and Uruguay* (London, 1930), p. 23.

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tacts with other countries.[3] It was the basic factor which made it necessary in the beginning to offer generous bounties to foreign capital, because the process of capital formation proceeds at a much slower rate in countries which do not have iron and steel industries. Rolling stock, rails and fuel had to be imported. The level terrain made construction easy, but the nature of the soil necessitated the use of a large amount of rock ballast.[4] Argentina began with a policy of subsidizing private companies, mainly British, for the construction of railroads, the subsidy usually taking the form of a guarantee of interest.[5] A direct money grant was very rarely used. Argentina, as compared with the United States, made few gifts of land and there were only a few instances in which the national or provincial governments bought substantial portions of the company's stock. The national government pursued no fixed policy with regard to the inducement offered to foreign capitalists. It granted what it found necessary to secure the services of capital and management.

The first railway was built under the auspices of the provincial government of Buenos Aires and put into operation in 1857. The province contributed 39 per cent of the original paid-in capital of 3,300,000 paper pesos, and later renounced its rights to dividends until the remuneration to the other investors reached 9 per cent.[6] The road was originally only 10 kilometers long. One of the reasons for mentioning it here is that its construction illustrates the lack of planning in early railway enterprise. An order was sent to London for a locomotive, and a secondhand one, part of the surplus material left

[3] See Frank Tannenbaum, *Whither Latin America?* (New York, 1934), pp. 22-44, and H. Foster Bain and Thomas Thornton Read, *Ores and Industry in South America* (New York, 1935), pp. 189-93.

[4] See Preston E. James, "Geographic Factors in the Development of Transportation in South America", *Economic Geography*, July 1925, pp. 252-55, and C. W. Ridge, Institute of Locomotive Engineers, South American Section, *Railway Gazette*, vol. 55, No. 14, October 2, 1931, p. 419.

[5] The most complete account of the history of Argentine railways up to 1890 is probably that given by E. Rebuelto in a series of articles appearing in the *Boletín de Obras Públicas* from 1911 to 1913 under the title of "Historia del desarrolo de los ferrocarriles Argentinos".

[6] *Ibid.*, vol. V, p. 137.

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over from the Crimean War, was shipped. The track was wide gauge, 1.676 meters.[7] Later roads, up to 1872, followed this accidental lead, as no one, apparently, was in a position to advise them that the wide gauge was not the most practicable for a large, thinly settled country.[8] The mileage today is practically evenly divided between broad gauge (1.676 meters), medium gauge (1.435), and narrow gauge (1.00).[9] The central government gave the *F. C. Central Argentino,* the first important railway constructed under its auspices, a 40-year 7 per cent guarantee of interest, payable in pounds sterling, and subscribed for 15,000 shares of stock, 19 per cent of the number of shares issued, at 20 pounds sterling each.[10] All equipment was to be imported free of duty, and one league of land on each side of the right-of-way, excepting where it passed through cities, or towns, was granted.[11] In addition, the government financed the survey of the route, costing 40,000 gold pesos.[12]

The government retained the right to intervene in the fixing of rates if the earnings should exceed 15 per cent.[13] The contract was approved by the national legislature on May 22, 1863. The entrepreneur was an American-born promoter of South American transportation companies, William Wheelwright;[14] the capital, however, was British. The unsettled political conditions of the country were reflected in the provision that the company would be reimbursed for any damage to its property resulting from civil war.[15] The government, of course, donated the land needed for stations and right-of-way, and the company was exempted from taxation for a period of forty

[7] *Ibid.*, p. 136.

[8] Juan José Castro, *Estudio sobre los ferrocarriles Sud-Americanos y las grandes lineas internacionales* (Montevideo, 1893), pp. 150-58.

[9] *Estadística, 1926*, p. xv.

[10] *Leyes, decretos, contratos sobre ferrocarriles nacionales, 1854-1880*, Dirección de Ferrocarriles Nacionales, B.A. 1891, vol. I, pp. 26, 37.

[11] *Ibid.*, p. 25. [12] *Ibid.*, pp. 3, 23.

[13] *Ibid.*, p. 27.

[14] Juan B. Alberdi, *La vida y los trabajos industriales de William Wheelwright* (Paris, 1876).

[15] *Leyes . . . sobre ferrocarriles nacionales*, vol. I, p. 7, Art. 15.

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years. The stipulation that all financial transactions were to be computed in pounds sterling indicates the unstable nature of the national currency.[16]

The *Central Argentino* concession, however, was not a typical one. No other road received so much aid. The period prior to the Baring Panic in 1890 culminated, as the following table shows, in the great railway-building boom of the eighties. The United States, also, experienced a great expansion of railway mileage during this same decade.[17] The rate of growth in Argentina was retarded during the decade following

RAILWAY MILEAGE[18]

(*In kilometers*)

1860	39	1880	2,516	1900	16,563
1865	249	1885	4,502	1905	19,794
1870	732	1890	9,432	1910	23,994
1875	1,956	1895	14,116		

the Baring Panic, but it increased at the turn of the century. Although Argentina proclaimed its independence of Spain in 1816,[19] its emergence as an important country dates from 1880. The effective union of all Argentine territory under the Argentine Confederation took place in 1862.[20] The war with Paraguay, however, in 1864-1870, necessitated large expenditures.[21] A successful campaign against frontier Indians in 1879 and the selection of Buenos Aires as the national capital in 1880 made internal peace more certain.[22]

The net immigration in the decade from 1857 to 1866 was 81,000; and this may be compared with a net immigration of 721,000 in the decade 1897-1906. The estimated population of the country in 1864 was 1,531,000; the census of 1895 showed a population of 3,955,000; and the estimate for 1906

[16] See John H. Williams, *Argentine International Trade under Inconvertible Paper Money, 1880-1900* (Cambridge, 1920), pp. 27-36.

[17] William Z. Ripley, *Railway Rates and Regulation* (New York, 1912), pp. 28-29.

[18] *Estadística, 1933*, p. 320.

[19] Williams, *op. cit.*, p. 27.

[20] William Spence Robertson, *History of the Latin American Nations* (New York, 1927), p. 240.

[21] *Ibid.*, p. 278.

[22] *Ibid.*, pp. 242-43.

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was 5,524,000. Another index of the rapid economic development of the country in the period before the Mitre Law is found in the increase in foreign trade. The following table gives net immigration, and the value of exports and imports, by decades for the years 1857-1907: [23]

Period	*Immigration* (*Thousands*)	*Exports* (*Millions of gold pesos*)	*Imports* (*Millions of gold pesos*)
1857–1866	81	—	—
1867–1876	301	392	504
1877–1886	457	590	655
1887–1896	705	1,025	1,107
1897–1906	721	2,022	1,447

The last decade, it will be noted, shows a large excess of exports over imports.

Argentine currency, prior to 1881, was characterized by inconvertibility, inflation and lack of uniformity. Laws passed in 1881, 1883 and 1887 promoted uniformity but did not secure permanent convertibility into gold.[24] The law of 1899 fixed the ratio of the paper peso to the gold peso at 44 per cent and arranged a *Fondo de Conversión* of gold to assure free convertibility.[25] Argentina maintained convertibility into gold under this law, except for a brief period in the World War, until 1929. The favorable trade balance, mentioned above, made this currency stability possible. The gold peso was worth 30 paper pesos in 1880; the paper peso was converted in 1882 at the rate of 25 to 1; and in 1899 the gold peso was worth 2.25 converted paper pesos.[26] The stability of the peso in international exchange following the 1899 law was an index of economic and political progress which was to enable the country to get railways built under much easier terms.

[23] The net immigration figures were computed from: *Extracto estadístico*, Dirección General de Estadística de la Nación, 1915, p. 589. Census figures: *ibid.*, p. xiii, Estimates, *ibid.*, p. 3. Import and export figures, *ibid.*, p. 3.

[24] Williams, *op. cit.*, pp. 33-35, 57-59.

[25] Law No. 3871 of November 4, 1889. *Colección completa de leyes nacionales* (Buenos Aires, 1918), vol. XII, No. 1, pp. 236-38.

[26] *Extracto estadístico*, 1915, p. 296, and Juan Alvarez, *Temas de historia economica Argentino* (Buenos Aires, 1929), p. 100.

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The writer has made a statistical analysis of the thirty important concessions prior to the Mitre Law. The results, however, are too detailed to be presented fully here. The provisions of these concessions led up to the Mitre Law, and that law was in fact a natural outgrowth of the provisions of concessions granted after 1890. Fifty per cent of the concessions, including the last nine prior to the Mitre Law, had no guarantee of interest. As for the remainder, the trend was to lower the interest guarantee. The earlier concessions provided for 7 per cent while the later ones stipulated 5 per cent interest. Twelve of the fifteen concessions having guarantees of interest provided that repayments to the government of amounts advanced by the state on account of guarantees of interest should begin, if, and when, the net income exceeded the rate of interest guaranteed. The guarantees were usually payable in gold pesos and the amounts guaranteed varied from 10,000 to 35,900 gold pesos per kilometer of line.

Sixteen of the thirty concessions provided that the government should have the right to fix tariffs, if receipts should exceed an agreed per cent. All contracts signed during the years just preceding the passage of the Mitre Law stipulated that the government would have the right to fix rates when gross receipts were in excess of a fixed percentage of recognized capital. The Mitre Law provides that the government shall have the right to prescribe rates when the gross income exceeds 17 per cent of the recognized capital.[27] The Mitre Law further sets up the standard of 60 per cent as the ratio of operating expenditures to receipts. This would give capital a return of 6.8 per cent.[28] Provisions, however, were made for exceptions to this rule, when conditions justified operating expenditures greater than 60 per cent of receipts.[29] The usual stipulation of the earlier concessions was that expenditures were not to exceed 50 per cent of receipts.

[27] Ley No. 5315, Sept. 30, 1907, *Colección completa de leyes nacionales*, vol. XIV, No. 1, p. 390, Art. 9.

[28] *Ibid.*

[29] *Ibid.*

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Argentina, unlike the United States, gave only a limited amount of land to encourage railway building. Only six railways, including the *Central Argentino,* already mentioned, received such grants. The *Central Argentino* disposed of most of its holdings within twenty years.[30] The land, for the most part, was sold in small tracts of 20 to 40 *cuadras.*[31] It was to the interest of the railway to have the land divided into small tracts. Large holdings were more often used for cattle raising, and livestock is not as profitable a freight commodity as wheat. Professor Miguel A. Cárcaño, who has written the best history of the land policy of Argentina, believes that the government might well have made a larger use of the railroads as a means of colonization.[32] The land policy of Argentina did not encourage the small farmer to become a landholder.[33] Land grants to railroads in the United States totaled 129,000,000 acres, and Professor Hibbard concludes that these grants sometimes ended in large holdings.[34] He also believes, however, that the roads sought to "settle the country as rapidly as possible with actual farmers."[35] One Argentine railway purchased 15,000 acres for resale to small holders and another invited the large landholders along its right-of-way to take some united action looking to the increase of small holdings.[36] *Latifundia* is probably the major factor in retarding immigration to Argentina.

All the concessions before the Mitre Law stipulate that materials used in construction and operation, when not available in the country, are to be imported free of duty. This pro-

[30] Miguel A. Cárcaño, *Evolución histórica del régimen de la tierra pública* (Buenos Aires, 1925), p. 192.

[31] One *cuadra* equals 4.17 acres.

[32] Cárcaño, *op. cit.,* p. 192.

[33] *Ibid.,* p. 518. See also José P. Podestá, *La pequeña propriedad rural en la república Argentina* (Buenos Aires, 1923), p. 121.

[34] Benjamin H. Hibbard, *A History of the Public Land Policies* (New York, 1924), p. 264.

[35] *Ibid.,* pp. 259, 263.

[36] *Railway Gazette,* Sept. 20, 1929, vol. 51, No. 12, p. 440, and *Commerce Reports,* Dec. 29, 1915, p. 1219.

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vision is also continued in the Mitre Law;[37] it is to expire, however, in 1947. Nine of the eleven provincial concessions before the Mitre Law specifically exempt the companies from all provincial and municipal taxation and twelve of the nineteen national concessions exempt the companies from all national taxation. The incentive which caused the companies to "accept" the Mitre Law—acceptance was voluntary—was that they were to be exempt, up to 1947, from all taxation—municipal, provincial and national—except a 3 per cent tax on net income.[38]

One year after the passage of the Mitre Law the government began a policy of building and operating its own lines, in areas too sparsely settled to tempt unaided private capital, and gave no more guarantees of interest.[39] The reason was that Argentina did not find the guarantee of interest a satisfactory method of subsidizing railway construction. The amount of the guarantee payment is by nature uncertain and hence difficult to provide for in the budget. It is, moreover, easy to underestimate the sums which the guarantee will require. The company, knowing that its income is certain, has insufficient incentive to increase gross revenue or to decrease operating expenditures.[40] While the concessions usually called for repayment of the guarantee advanced, if, and when, company income exceeds the guaranteed per cent, it might not be diffi-

[37] *Colección completa de leyes nacionales,* vol. XIV, No. 1, p. 390, Art. 8.

[38] *Ibid.* The thirty concessions above referred to are given in: *Leyes, contratos y resoluciones referentes a los ferrocarriles y transvias a tracción mecánica de la república Argentina,* Ministerio de Obras Públicas, Buenos Aires, 7 volumes, 1904-1913: vol. II, pp. 464-70; vol. IV, pp. 339-45; vol. IV, pp. 199-202; vol. II, 263-66; vol. IV, pp. 491-95; vol. III, pp. 339-41; vol. II, pp. 191-95; vol. III, pp. 257-266; vol. II, pp. 547-51; vol. III, pp. 65-67; vol. III, pp. 369-71; vol. III, pp. 5-7; vol. III, pp. 187-89; vol. III, pp. 341-44; vol. II, pp. 157-61; vol. II, pp. 341-43; vol. II, pp. 52-56; vol. III, pp. 120-24; vol. III, pp. 32-38; vol. IV, pp. 153-59; vol. III, pp. 177-78; vol. IV, pp. 479-81; vol. II, pp. 535-36; vol. III, pp. 212-32; vol. IV, pp. 275-78; vol. IV, pp. 182-84; vol. III, pp. 60-62; vol. IV, pp. 186-87; vol. VII, 370-74; vol. VI, pp. 626-28. The order is chronological.

[39] Ley No. 5559, August 28, 1908, *Colección completa de leyes nacionales,* vol. XIV, No. 1, pp. 536-41.

[40] See *Memoria del Ministro del Interior, 1895,* p. 64.

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cult to arrange the accounting so that such excess does not occur.

The burden of the railway guarantee of interest payments helped bring on the Baring Panic of 1890, probably the most serious financial crisis in the history of Argentina. The burden had two aspects: first, there was the problem of raising by taxation the funds within the country and, second, there was the problem of securing the necessary amount of foreign exchange for the payable-in-gold interest guarantee. The two phases were closely related. If the paper peso is depreciating, more pesos are required to pay the guarantee. An important cause of a depreciating currency is failure to balance the budget and increasing obligations for the payment of interest guarantees help unbalance the budget. Argentina had been a heavy borrower abroad; she had been "paying" interest and amortization on her obligations by new loans inasmuch as her favorable merchandise balance had not been sufficient to pay the service charges on her foreign obligations. But in 1889 new loans were not enough (by 3,510,000 gold pesos) to meet the service charges on the government's foreign (British) obligations. The next year Argentina was not able to borrow anything abroad and the deficit in the national government's balance of borrowing was 14,316,000 gold pesos, 20 per cent of which was railway guarantee of interest obligations. The country, therefore, was compelled to declare a moratorium on its foreign obligations.[41]

A special commission was appointed in 1893 to study the whole question of the guarantees of interest.[42] The government, in 1894, paid 2,000,000 gold pesos out of an annual amount due of 4,973,000 gold pesos[43] and in the following year it was able to announce settlements with seven of the leading companies.[44] Five companies took lump sum payments in rescission of the guarantees and two were bought outright.[45]

[41] Williams, *op. cit.*, pp. 94, 118.

[42] *Memoria del Ministro del Interior, 1893*, p. 113.

[43] *Ibid., 1894*, p. 80.

[44] *Ibid., 1895*, p. 74.

[45] Payment was made in 4 per cent external gold bonds. See *ibid., 1895*,

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Brazil in a similar operation bought all the guaranteed interest lines.[46] The Argentine government was able by this means to reduce its annual railway guarantee of interest obligations by approximately one half.[47]

The change from a system of private companies operating under interest guarantees to one of construction and operation by the government indicated dissatisfaction with the guarantee of interest as a *method of subsidy,* and confidence in the improved financial position of the government, rather than any decision concerning the relative merits of public and *unaided* private operation. The new policy of government construction and operation of railways in thinly populated areas did not materialize until the country had demonstrated its ability to maintain convertibility of the paper peso into gold.

II

The rapid growth in Argentina's agricultural exports, and the comparative stability of international economic relations in the period from the passage of the Mitre Law in 1907 to the outbreak of the World War, made this law a satisfactory basis for the regulation of the British lines during that period. The following table shows the growth of railway mileage from 1905 to 1934:[48]

1905	19,794 kilometers	1925	36,055 kilometers
1910	27,994 "	1930	38,120 "
1915	33,709 "	1934	39,830 "
1920	33,884 "		

Railways owned by the government increased from 2,546 kilometers in 1905 to 9,009 in 1933.[49] The increase of 76 per cent, in this thirty-year period, of privately owned mileage, mainly

p. 76, and *Memoria del Ministro de Obras Públicas, 1898,* p. 52. Control of railways was transferred in the interim from the Ministerio del Interior to the Ministerio de Obras Públicas.

[46] See Julian S. Duncan, *Public and Private Operation of Railways in Brazil* (New York, 1932), p. 50.

[47] *Memoria del Ministro del Interior, 1895,* p. 76.

[48] *Estadística, 1933,* p. 322.

[49] *Estadística, 1905,* p. ix, and *1933,* p. 48.

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British, was effected without government subsidy; and the growth, particularly from 1905 to 1915, is further evidence that the Mitre Law was considered favorable by the British lines. The value of exports rose from 296 millions of gold pesos in 1907 to 519 millions in 1913.[50] The World War sky-rocketed agricultural export prices but this period was characterized by disputes over wages, working conditions and freight rates. The rising prices increased the living costs of the railway workers and the costs of material to the lines. The heavy war demands on British industry made the problem of adequate maintenance a difficult one. The rise in prices which continued after the cessation of hostilities did not lighten the burdens of the railroads or their employees, and the depression of 1920-1921 occasioned fresh demands for reduced freight rates. These controversies, however, are relatively minor ones when compared with those which may be dated from the beginning of the 1929 world depression.

This depression brought into clear relief the problems of the decline in the value of exports and the rise of motor competition, which few foresaw in 1907. The decline in the gold value of exports (in millions of francs) was as follows:[51]

1928	25,913	1932	8,387
1929	23,126	1933	7,088
1930	11,882	1934	6,412
1931	10,745		

The decline in the prices of agricultural products, which began in 1924, was obscured until 1929 by the rise in the volume of exports and by heavy borrowings and capital imports from abroad.[52] After 1929 there was, however, little change in the volume of exports, the annual average for the period 1930-1934 being 14,872,000 metric tons as compared with 15,012,000 for the period 1925-1929. The volume of imports decreased from an annual average of 11,494,000 metric tons for the

[50] *El comercio exterior Argentina en 1932 y 1931*, pp. 6-7.

[51] Computed from *El comercio exterior Argentino en 1934 y 1933*, pp. 9, 85-87.

[52] See D. M. Phelps, "Industrial Expansion in Temperate South America", *American Economic Review*, June 1935, pp. 274-76.

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period 1925-1929 to 8,497,000 for the period 1930-1934.[53] The following table gives ton and passenger-kilometers, gross income, expenditures and net income of all Argentine railways for the periods 1924-1928 and 1929-1933:[54]

Year	*Ton kil.*	*Pas. kil.*	*Gross Income*	*Expenses*	*Net Income*
	(*In millions*)		(*In thousands of gold pesos*)		
1924.....	11,722	3,791	263,181	175,937	87,244
1925.....	11,124	3,840	250,680	180,359	70,322
1926.....	11,585	3,909	262,060	186,496	75,563
1927.....	13,212	4,023	285,865	203,234	82,631
1928.....	13,594	4,187	289,619	208,701	80,919
An. Av.	12,247	3,950	270,281	190,945	79,335
1929.....	13,882	4,358	287,528	214,071	73,456
1930.....	11,250	4,344	241,504	191,969	49,534
1931.....	11,876	4,038	237,855	186,952	50,904
1932.....	10,543	3,719	211,193	170,770	40,423
1933.....	10,077	3,525	199,436	166,338	33,097
An. Av.	11,507	3,997	235,503	186,020	49,483

The indirect effects on the lines of the decline in the value of agricultural exports was almost equally disastrous. The fall in export values caused the nation to abandon convertibility of the paper peso into gold.[55] The official financial results of operations, as given in the preceding table, are in terms of gold pesos but passenger and freight tariffs are collected in paper pesos. The sterling income of the British railways, there having been no rate increase, is diminished by the difference between the nominal par of exchange and the actual buying rate. Recent fluctuations in pound sterling cable transfers (par is 11.45 paper pesos), in round numbers, have been as follows: 1934, 21 to 18 paper pesos; 1935, 19 to 18; 1936, 18 to 17. The most recent quotation, 16.53 (October 2, 1937), shows the effect of higher agricultural prices. It will be recalled that the fixed convertibility of the paper peso into gold after 1899 was one of the important factors enabling Argentina to get non-subsidized private capital for railway building. The twin effects of declining paper peso net income and ex-

[53] Computed from *El comercio exterior Argentina en 1934 y 1933*, pp. 42-43.

[54] *Estadística, 1933*, pp. 118-19, 128-29, 322-23.

[55] See Lawrence Smith, "Suspension of Gold Standard in Raw Material Exporting Countries", *American Economic Review*, Sept. 1934, p. 434.

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change losses caused the quotation of the shares of the British companies on the London Stock Exchange to shrink to fractions of their former values.[56] The following table shows the latest available London Stock Exchange quotations (par £100) of the common stock of the major lines.[57]

	1929	1934		1935		1936		Aug. 24, 1937
	Average	High	Low	High	Low	High	Low	Approximate Closing Prices
Argentine Great Western	92.3	16.0	8.0	10.5	4.0	17.0	5.7	9.5 – 11.5
Buenos Aires Pacific	98.7	16.5	8.5	10.5	4.8	17.2	6.2	9.7 – 10.7
B. A. Gt. Southern	105.8	35.0	22.0	27.0	13.5	32.0	14.0	23.5 – 24.5
Central Argentina..	95.0	23.0	13.5	17.8	7.0	33.2	8.2	22.5 – 23.5
Entre Rios	93.9	21.0	12.0	15.0	6.5	17.5	6.0	10.0 – 11.0

The shares have declined more than the competition from other types of carriers, and the relative absence of overbuilding, would lead one to expect.

The second major factor altering the conditions of railway regulation has been the development of motor competition. Truck competition, while not so far advanced in Argentina as in other countries, because of the nation's lack of roads, has already taken a part of the traffic which is able to bear high freight rates. Bus transportation and the use of the privately owned automobile for transportation also have diminished passenger traffic. The road-building program, planned and in progress, will increase motor competition, and most of the roads are to be constructed in the regions which have the greatest railway mileage. The plans of the government call for an expenditure of 300,000,000 paper pesos on new construction for the period 1936-1942.

The plight of the railways became so serious that the President of Argentina in 1934 appointed a special commission (*Junta Honoraria*) to study the situation and make recom-

[56] See Carlos Garcia-Mata, "Las finanzas ferroviarias a traves de la cotizacion de las acciones", *Revista de Economia Argentina*, January 1935. I am indebted to the First National Bank of Boston for figures on London–Buenos Aires exchange rates.

[57] Figures for 1929 from Instituto de Estudios Economicos del Transporte (Buenos Aires); 1934, 1936, 1937 quotations from *Morning Post*, Aug. 25, 1937, and May 26, 1936.

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mendations. The membership of this body included a former minister of foreign affairs, a former minister of public works, the director of government railways and the chairman of the manufacturers' association. The recommendations of the commission, except for the suggestion that the railroads be granted a lower exchange rate on their remittances than is granted to other non-governmental buyers of exchange, follow lines familiar to readers of transportation literature. It advised changes in rates, services and regulations governing working conditions, and it favored coördinated control of all forms of transportation.[58] The investigation would have been more fruitful, it seems to me, if its scope had been widened to include all forms of transportation, because the endorsing of a preferred position for the railroads in buying exchange is of such importance as to call for an analysis of the relative value and costs to the country of the various types of conveyance.

Legislation has been pending before the national legislature for the unified control of all forms of transportation since 1935, and an act was finally passed January 15, 1937. Article 10 of this measure, as originally proposed, could have been the means of coördinating the construction of new roads with existing means of transportation. It provided: "For the better coördination of transportation facilities, the executive power, in investing available funds in surfaced highways, will give preference to the construction of those converging on railway stations or ports." The bill as finally enacted into law is limited to the regulation of the services, responsibilities and rates of common carriers and is silent on the question of limiting the construction of motor highways which parallel railway lines. Students of transportation history in the United States will recall how little influence the railroads have had in preventing the building of trunk highways along their lines. The British lines will have even less influence because they are both owned and managed by foreign capital. It is also interesting to note that, according to the latest available information (August 1937), the act has not yet been put into operation.

[58] The full report, unfortunately, has not been published. References to its provisions are based on the summary published in *La Nación*, April 17, 1935.

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Carriers with only one vehicle or vehicles belonging to either the buyer or the seller of the transported merchandise are specifically exempted from its provisions.[59]

It needs to be stressed that the very fact that a utility in South America is owned by a foreign company puts it on the defensive in dealing with the public. This is particularly true in the case of a country of the size and international position of Argentina.[60] Newspapers that handle owners of large estates and native industrial capitalism gently show much less restraint in criticizing foreign companies; practicing politicians, moreover, fear the accusation of alliance with a foreign-owned utility. The result is that both shippers and workers are more apt to win disputes over rates, working conditions and wages than in conflicts where capital and management are domestic, and this happens in spite of the fact that the British lines are in a position to make substantial contributions to political organizations championing their cause. Argentina's control of the rate at which the British lines buy pounds sterling for their remittances to London is a not ineffective bargaining power; an example of its use is the 1936 reduction in the freight rates on corn as a *quid pro quo* for better exchange rates.

The records do not show any protests by Argentine officials against British diplomatic or governmental pressure in behalf of the railways. The British government's attitude, on the whole, has been one of friendship and coöperation.[61] There can be no question about the British railways having played an important part in the economic development of Argentina. Their main function, of course, has been the provision of transportation facilities so that the fertile pampa could be opened for agricultural development. Passenger fares have been

[59] Article 3. I am indebted to Mr. W. Rodney Long of the Department of Commerce for a copy of the text of the bill.

[60] Argentina has had its independence protected by both the United States and Great Britain. Parker T. Moon, *Imperialism in World Politics* (New York, 1926), pp. 409-11.

[61] On this point see Herbert Feis, *Europe, the World's Banker, 1870-1914* (New Haven, 1930), p. 85.

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lower than in the United States while, as the following table shows, freight rates have been higher.

COMPARATIVE FREIGHT AND PASSENGER RATES
ARGENTINA AND THE UNITED STATES [62]

	Per Ton Mile (*In cents*)			*Per Passenger Mile* (*In cents*)		
	1926	1932	1933	1926	1932	1933
Argentine privately owned ...	2.27	1.77	1.75	2.22	1.77	1.75
Argentine government	2.08	1.80	1.86	3.05	2.88	2.72
United States	1.09	1.05	1.01	2.94	2.22	2.01

Possible explanations of the higher Argentine freight rate per ton mile are: (1) the fact that the country, in contrast with the United States, has neither coal nor iron; (2) coal, which carries a very low rate, is a major part of the traffic in the United States, while little coal is hauled by Argentine railways; (3) part of the traffic of Argentine railways has been seasonal and one way (the export wheat movement, for example, has been concentrated in a few months of the year, and the limited purchases of the masses of agricultural workers and share croppers make the inward movement less than the outward); (4) the average length of haul is lower than in the United States; and (5) the traffic density is not as great. There is, however, no means of deciding how much weight should be given to these factors.

Nominal earnings of the British lines, judged by either Argentine government valuation figures, London Stock Exchange reports, American standards, or the interest the government has had to pay on its sterling loans, have been moderate, as the table on the following page indicates.[63] Professor Haring, however, has pointed out that the British lines have used the device of the interlocking equipment company to

[62] I have followed the official reports in giving the rates in terms of the gold peso. It should be borne in mind, however, that since Argentina departed from the gold standard in 1929 this has been a nominal figure. This method is unquestionably valid for 1926 and the relations in 1932 and 1933 are much the same. Argentine figures computed from *Estadística, 1926*, pp. 261-62; *1932*, pp. 272-73; *1933*, pp. 272-73, and U. S. figures from *Statistics of Railways in the United States, 1933*, Statement 53.

[63] Argentine government, *Estadística, 1913, 1918, 1923-33*, Table 28. London

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RATES OF RETURN

	British Lines			
	Argentine Government Valuation	*London Stock Exchange Valuation*	*U. S. Railways*	*Argentine Government Sterling Bonds*
1933	2.03	1.7	1.8	4.1
1932	2.65	1.9	1.3	4.2
1931	—	3.0	2.0	4.3
1930	3.25	4.7	3.3	4.4
1929	4.75	5.5	4.8	4.4
1928	—	5.5	4.7	4.4
1927	—	5.5	4.3	4.4
1926	5.55	5.3	5.0	4.4
1925	—	4.9	4.7	4.4
1924	6.51	4.9	4.2	4.4
1923	5.56	4.9	4.3	4.4
1918	3.39	3.0	3.3	4.4
1913	4.62	4.8	4.9	4.3

" conceal " the amount of their profits.[64] It is, therefore, not possible to ascertain with any degree of precision the returns on the capital invested. The lack of frankness, which the resort to this method of profits secrecy illustrates, is one of the factors explaining the indifference of large sections of informed Argentine public opinion to the present predicament of the British lines.

One of the knottiest points about freight rates in Argentina and elsewhere is occasioned by the problem of promptly adjusting them to changes in price levels and the rate of business activity. It is, however, difficult for the lines to reduce rates in periods of depression, if they have not accumulated a reserve for this purpose during periods of prosperity, for railway operating expenditures are relatively inflexible. Argentine exports are raw materials, which are particularly vulnerable to the movements of prices, and on the other hand the railway

Stock Exchange and rate of return on Argentine government, national and provincial, sterling bonds, *South American Journal*, June 23, 1934, pp. 621-23; U.S.A. rate of return on investment in road and equipment supplies and cash, Bureau of Railway Economics. The average rate of return on all British foreign investments for 1933 is estimated at 4.3 per cent.

[64] See Clarence H. Haring, " Depression and Recovery in Argentina ", *Foreign Affairs*, April 1936, p. 518.

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equipment, which has to be imported from abroad, is subject to relatively minor price changes. The depreciated exchange rate is, of course, the result of this disproportionate fluctuation in the prices of agricultural and manufactured products, and, therefore, the factors making for inflexibility are multiplied.

The British lines, as a part of the business of transportation, have found it to their advantage to spend money in promoting better agricultural methods. The roads gain, if improved quality increases the foreign demand for Argentine beef, or if the growth of fruits commanding a ready sale abroad is encouraged. Demonstration farms, extension agents, nurseries for the sale of improved types of fruit trees, the distribution of seeds at cost, the establishment of fruit-growing subsidiaries and loans for irrigation projects are included in this work.

The fate of the British lines depends in part on British importation of Argentine products. The United Kingdom is Argentina's largest customer. The Ottawa Conference (1932), however, demonstrated to Argentina that she has no guarantee that this market will be always open to her. Recent technological changes in the method of preserving chilled beef for overseas shipment have robbed Argentina of its advantage of being closer to London than is New Zealand or Australia. Argentina, therefore, took the initiative in the negotiation of the Rocco Agreement by which Great Britain promised not to decrease her meat imports from Argentina more than 10 per cent below the 1931-1932 level without consulting with all meat-exporting nations. Argentina, in turn, agreed that all exchange arising out of the sale of Argentine products to Britain would, except for sums in payment of the Argentine public debt abroad, be available for British remittances, and that sterling bonds would be issued for the British peso balances in Argentina. The Rocco Agreement was in effect for three years, and the continuing treaty, to run until 1939, was signed December 1, 1936. It provides that reductions in quotas of chilled beef from Argentina shall not exceed 2 per cent of the 1935 imports for any one year and limits reduction within the three-year period to 5 per cent. His Majesty's government also bound itself to gradual reductions in the imports

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of other Argentine meat products. The stipulations concerning exchange are similar to those in the original agreement.[65] Argentina, however, has no certainty that the pressure of Australia and New Zealand may not further curtail her exports of meat products to England. The fact that the favorable trade balances of New Zealand and Australia with Great Britain are proportionately less than that of Argentina with the United Kingdom, the extent of British investments in the Dominions, and the bonds of common membership in the British Commonwealth of Nations make such reduction logical. If this happens, and Argentina should not be able to make up the loss in other markets, the pressure on the peso would make remittances more difficult than they are at present. Argentine sales to Great Britain, however, have held up better, as a matter of fact, than to other countries.[66]

Given a marked curtailment of United Kingdom purchases of Argentine products, the values of the securities of British-owned Argentine railways would decline further. A struggle might then ensue between the common stock owners and the holders of funded obligations, if the shrinkage in quotations convinced the bondholders that their equity might disappear. They probably would wish to exchange their bonds for the bonds of the Argentine government. The management of the lines would oppose such efforts to sell to Argentina, and His Majesty's government might be forced to decide which group it favored. (On November 3, 1937, the Argentine government issued a decree taking over the operation of the British line, *Central Cordoba,* for one year pending purchase. The explanation is that the nationally owned lines need an entry into the city of Buenos Aires.) An interesting aspect of the situation is that some Englishmen who hold large amounts of Argentine railway securities are vocal protectionists from the

[65] Convention between the Government of the United Kingdom and the Government of the Argentine Republic, May 1, 1933, *Sessional Papers,* 1932-1933, vol. 27, Articles I—III, VI; and *The Times* (London), Dec. 3, 1936.

[66] See Stanley G. Irving, *Economic Conditions in Argentina* (London, 1935), p. 23.

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standpoint of both the British Isles and the Empire.[67] A gradual reduction of Argentine import quotas, as stipulated in the Rocco Agreements, will give the economy of the South American republic time to make the needed adjustments and will, therefore, be much less damaging to the British lines.

III

The existence of three types of gauge in Argentina has already been cited as an illustration of the lack of any systematic planning in the construction of railways. The government reports during the period of reflection following the Baring Panic call attention to the lack of any planning. The 1891 report of the *Ministro del Interior* calls for studies relating railway building to the existing centers of population.[68] Reports of 1892, 1893 and 1894 are in similar vein.[69] The 1893 report makes the specific charge that speculative considerations, rather than any scientific study of the needs of the country, controlled the building boom of the eighties.[70] Conditions in Argentina, however, were not very different from those in the United States. It will be remembered that both countries subsidized railroad building, Argentina by guarantees of interest mainly, and the United States by capital grants. One of the abuses in the United States was to build a road paralleling an existing line with a view to compelling the older line to purchase the new. A case in point is the building of the West Shore Road which ran parallel to the New York Central. It should not occasion surprise, therefore, that, as late as 1923, an Argentine government organ could declare that no plan existed for the building of government railways.[71] Planning alone will not rescue the British railways from their present plight, but it can be the means of making more effective use of national transportation resources

[67] Editorial "Argentina and the Wheat Question", *South American Journal*, June 23, 1934, p. 609.

[68] *Memoria del Ministro del Interior, 1891*, p. 37.

[69] *Ibid., 1892*, pp. 46-52; *1893*, p. 108; *1894*, p. 74.

[70] *Ibid., 1893*, pp. 107-108; see also Ernesto J. Tissóne, *Legislación ferroviaria* (Buenos Aires, 1919), p. 127.

[71] *Boletín de Obras Públicas*, 1923, pp. 855-61.

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and curtailing the duplication of existing facilities. The following discussion will assume that the strategic factor is the *building* of roads and that the *regulation* of competing means of transportation is of secondary importance.

These principles, in my opinion, should guide the drafting of a plan: (1) The amount of transportation the country will require is dependent on the national land tenure policy. The system of *latifundia,* the emphasis on cattle raising on the large estates which makes the renting grain farmer a temporary incident in the preparation of ground for alfalfa sowing, and the difficulty of obtaining titles from the government are factors retarding the coming of larger numbers of immigrant settlers to Argentina. Argentina has (1931) 4.2 persons per square kilometer as compared with 15.9 for the United States, Italy's 133.7, and Japan's 171.4.[72] The fertile farming areas and the salubrious climate of Argentina justify the assumption that a larger population could be supported. Long range transportation planning can have only a limited ameliorative value until this basic question is settled because transportation facilities adequate for the present pattern of land tenure would not suffice, if a policy of making it easier for tenants and selected immigrants to buy land were put into operation.[73]

(2) The outlook for agricultural exports suggests the transportation plan should place a minimum reliance on foreign materials. The freeing of national economy from dependence on the import policies of other countries calls for the largest practicable development of native industries. Increasing indigenous manufactures acquire added importance when it is remembered that the raw materials which Argentina exports are subject to the widest variations in price while the prices of the manufactured goods which, up until 1929, constituted a major part of the nation's imports are relatively inflexible. The relative emphasis on railways would depend partly on the nature of the government's efforts to build a national steel

[72] Computed from *Statistical Year-Book of the League of Nations, 1932-1933,* pp. 19-22.

[73] See Mark Jefferson, *Peopling the Argentine Pampa* (New York, 1926), pp. 174-78, 194-95.

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industry on the use of scrap metal. The prohibition against the export of scrap iron and steel, which has been in force since 1929, may be the forerunner of such a policy. The experience of Italy and Japan shows that it is not impossible to base a moderately efficient steel industry on scrap metal. The fact that oil is found in Argentina points, of course, to a large proportionate use of motor transportation and greater reliance on the Diesel engine as a source of railway power. Both the nationally owned and British lines have recently (1937) made substantial purchases of Diesel railcars.

(3) The presence of adequate supplies of road-building rock in southern and western Argentina, plus the binder provided as a by-product of the national petroleum industry, indicates that emphasis should be placed on the macadam road. Argentina has sufficient limestone for making cement and there are several cement plants in the country, but the manufacture of cement requires fuel, and, therefore, the concrete road is relatively more expensive than in countries which have adequate supplies of coal. The modern methods of grading, draining and maintenance will make the new type of dirt road exceedingly useful in the less densely populated areas.[74]

IV

It is too early to complete a balance sheet of benefits and losses, from the standpoint of the British economy, of this export of capital because it is impossible to determine now how much of the equity of its nationals will disappear. The question of the effects of capital export in domestic cyclical fluctuations has not been adequately explored; there is, for example, evidence which seems to indicate that loans to the Argentine government were one of the factors in the 1890-1894 depression in the British Isles. Loans to the Argentine government in the eighties caused the failure of the banking house of Baring Brothers. Commitments for railway construction were an important factor in the heavy borrowing by Argentina. The

[74] I am indebted for my information on recent developments in road transportation in Argentina to Mr. Henry Aaron of the U. S. Bureau of Public Roads who spent a year and a half as a resident engineer for the Argentine government.

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bankruptcy of Baring Brothers was a link in the chain of the financial phenomena of the 1890-1894 depression.[75] The development of a cheap and abundant source of food can be put on the credit side in the British ledger. The cyclical swings in the expansion of domestic capital plant and loans abroad were based in part on a system of income distribution which gave a limited share to the working classes. It may be doubted if the British worker's gains from cheaper food compensated him for the "loss" of a larger proportion of the national income and for the depression phases of the business cycle, which bore more heavily upon him than upon capital. The British worker, however, gains from the continuing exports of British fuel, rails and rolling stock which ownership (and the absence of an Argentine steel industry) makes possible. The relative proportions of United Kingdom material used by the British lines, despite recent decreases in favor of products of Argentine manufacture, have not fallen below 60 per cent.

It is interesting, in the light of this analysis of the effects of this capital export on Britain, to note that not only was the Argentine economy as a whole the beneficiary of this import of capital but also that it has increased the Argentine worker's share of his country's national income. Argentine railway workers, in particular, and indirectly their brother laborers, in general, are able to get higher wages and better working conditions for the simple reason that the capital is foreign. It needs to be emphasized that the most important single factor in the enactment of labor legislation in South America has been the desire to curb foreign capital. The salaries paid to managers from Great Britain and the wages paid to skilled British workers also tended to raise native wages and working conditions.[76]

[75] See Willard L. Thorp, *Business Annals* (New York, 1926), p. 173.

[76] The English, particularly in the beginning of the railway enterprise, had to import not only the managing personnel, but also many skilled workers. It was necessary to pay these workers more than they received at home in order to persuade them to leave. The pay received by the foreign worker was thus a lever in the hands of the native worker for higher wages. The descendants of some of these British workers, with only the status of Argentine citizens, are now employees and their presence probably tends to improve standards.

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Equal significance attaches to the question of the economic position of the railways in the Argentine issues of *latifundia* and industrialization. They would benefit from the more intensive agriculture which would result from smaller holdings. The Creole landowners, who are the holders of large tracts, correspond to the nobility of Europe, and until the election of Hipolito Irigoyen in 1916 their control of government policies had not been seriously challenged.[77] The steep decline in agricultural prices which began with the 1929 depression forced Argentina to increase her manufactures and has thereby fostered the rapid growth of a powerful class whose economic interests do not coincide with those of the large landowners. A dynamic factor is thus brought into the process of social change. The drive for national industries will become more insistent, if Great Britain or other countries should decide to reduce still further their imports of Argentine products. It does not seem likely that the British railways as such will exert themselves to increase the imports of British manufactured products; for, if the growth of domestic (Argentine) industry brings a more stable rate of economic activity, they will gain.

[77] See Ernest Galarza, "Argentina's Revolution and Its Aftermath", *Foreign Policy Reports*, October 1931, p. 310.

JULIAN S. DUNCAN

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THE SOCIAL SCIENCES TODAY*

TOWARD the end of the eighteenth century there appeared in England three superb contributions to the social sciences: Gibbon's *Decline and Fall of the Roman Empire*, Smith's *The Wealth of Nations*, Bentham's *Morals and Legislation*. These were products of university men but not of academicians. Gibbon and Bentham never held a university post; Smith resigned his at the first opportune moment. Each had studied at Oxford, each had come away convinced that "nothing could possibly be learnt at Oxford." Yet, their inadequate schooling proved a limited liability. These men found it possible to solve the major enigma of history, to synthesize the economic behavior of men and nations, to outline the basic relations of citizens to a state. Clearly, their solutions were not perfect but they were so superior in form and content that they won the acclaim of all literate men.

Shortly thereafter, while England was busy digesting power machinery and France was preoccupied with the antics of Napoleon, Prussia completed a silent revolution. She reorganized her universities, a move imitated eventually by neighbors near and far. This reformation was of substantial moment. The physical sciences began to flourish; the advances of technology followed closely; the material foundations of modern civilization were reconstructed. Less spectacular but only slightly less pervasive was the incidence of university reform upon the social sciences. The doctrines of the historian, the economist, the political philosopher did much to mould contemporary thought which in turn influenced greatly the institutions of nationalism, capitalism and democracy.

As decade followed decade, the social sciences were ever more completely monopolized by the universities; competition from interlopers became exceedingly rare. This trend had important implications. The university staff was recruited primarily from the upper classes, the same classes which through the media of gifts, of clerical power and of statecraft exercised a determining influence upon general

* *Authority and the Individual: Harvard Tercentenary Publications.* Cambridge, Harvard University Press, 1937. x, 371 pp. $3.00.

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policy. The hierarchical structure of the universities enhanced conformity; advancement depended upon the good will of elders, a factor which led to the abortion of many a radical idea.

The constant increase in the number of students contributed greatly to the standardization of the curriculum; of necessity, great value was attached to systematic presentations. The popularity of classical economics was in part a function of its logic, easy to expound and easy to comprehend; the rapid growth of the evolutionary approach to history can largely be ascribed to the pedagogical virtues of long lists of dates and names. The fact that captains of industry found classical economics soothing, that nationalists were able to utilize effectively the recordings of the historian, did little to undermine the prestige of these approaches.

Teaching and research were inseparable; the university professor engaged in both. The same forces which made teaching staid and formal confined research to narrow bounds. But the ivory tower had a road which led to the thoroughfare, for the recluse needed food. By the end of the nineteenth century a powerful force was ready to jolt the social sciences out of their equanimity.

The success of the physical sciences in conquering matter and the marked inability of the social sciences to control man provided a contrast irritating to the point of action. Students of economics, history and politics began to imitate the methods of their proficient confrères. The accumulation of new facts and the more exact measurement of old facts became the keynote of reform. The libraries filled rapidly with the accounts of the activities of nations and men, ancient and modern, major and minor. With the passage of years, the scholars redoubled their efforts; not even the World War interfered radically with their assiduity. Finally, a product of the War—the romanticism of the vanquished which found expression in the most unromantic of revolutions — broke the tradition. But only in part. Outside of Germany, the universities continued in their accustomed ways, bemoaning the loss of their esteemed compeer, little interested in autopsy or augury.

What the eclipse of Berlin and Heidelberg was unable to achieve, the Tercentenary of Harvard finally accomplished. The contributions of science and scholarship to modern life formed the center of the celebration, establishing thereby an opportunity for the taking of inventory. The five symposia were participated in by the élite of the academic world; the selection was most favorably skewed. Much attention was devoted to the social sciences; the symposium entitled

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Authority and the Individual concerned itself with the "economic, social, political, and intellectual factors in the structure of society which act upon the individual through social institutions and through accepted ideas." These sixteen lectures present material highly favorable for the appraisal of fifty years of intensive work.

A cursory review suggests that imitation of method has not led to identity of results; "the sciences of social behavior lag far behind the natural sciences in certainty." Reality has not been brought under control. The lectures on "The State and Economic Enterprise" recall vividly the impotence of economic thought during the devastating depression of recent years. "Stability and Social Change" may be a convenient title for the enlightening essays on conservative factors in early colonial and recent British history, but sociological theories have been of small moment during the social convulsions of the last decades. The symbolic and instrumental values of legal systems are discussed in "The Place and Function of Authority"; the Greek Spirit and the Constitutional Convention are studied. But this century has witnessed the double cross make way for the hammer and sickle; it has watched the exit of the Hohenzollerns who reigned by the grace of God and the entrance of the bellicose mystic who rules in the name of the Aryan spirit. The fickleness of words and the inconstancy of ideas are illustrated in "Classicism and Romanticism". But these learned discourses on the relativity of thought are like whispers in a hurricane of propaganda.

Economic depression, political revolution, the transvaluations of legal systems, mass psychoses — these, the increasingly typical phenomena of Western civilization—underline the failure of the social sciences to control behavior. Nor can the sententiousness of the addresses hide the fact that at the moment of their delivery the nations of the world, East and West, were hastening final preparations for a war which will render beyond recognition, if it will not completely destroy, the major institutions of modern life.

The physicist advances from victories over the atom to victories over the electron; the biologist brings vitamins and then hormones to the aid of men; the economist and the historian have little to show for their labors. But theirs is a study of men in groups. Social life implies control, control implies power, power implies conflict. The more dynamic a society, the more probable the conflict, for the great conservative institutions—the law, the church, the school—operate most efficiently in a static environment. But the phenomenal vitality of modern technology leads "to ever new conquests. The economic

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system is caught up in the advance . . . the political system follows in the rear . . . with strange twistings and tergiversations." Impotent is thought when in direct conflict with gold and the sword.

This failure of "organized intelligence" to control social behavior is not overlooked, yet an optimism of startling intensity runs through the essays. It is an optimism born of evasion. Silence reigns on the subject of predestination, spiritual and material; slight cognizance is taken of the difficulties inherent in the conversion of large numbers; almost nothing is said of the alternative goals of salvation. It is suggested, however, that the period of experimentation has been too short, that the continued application of the methods of the natural sciences will eventually bring results. "Chercher, chercher encore. Regarder de plus près, pour remplacer, s'il est possible, les approximations par les certitudes . . . revenir aux faits, et à la critique des faits." This hope, like all hopes, cannot be proven false; yet skepticism seems in place. It appears unlikely that additional tomes on the history of trade unionism will bring an end to industrial strife or that detailed studies of imperialism will satisfy the appetites of hungry nations. Society is not subject to conscious control, not even by students of social behavior.

Are the social sciences a fraud, and social scientists impostors? This world produces many goods: cosmetics please the eye; drink warms the stomach; books gratify the mind. Knowledge about the structure and operation of social institutions is sought by many and the social sciences are concerned with fulfilling this demand. However, the queries will never permit of more than partial solution, for the facts accumulate too quickly and each investigator, by virtue of his unique personality, sees the facts somewhat differently. Theories without facts are as bad as facts without theories. Mr. Hoover's *The Challenge to Liberty* is indicative of the first, the 152 volumes on *The Economic and Social History of the World War* are typical of the second.

The social scientists can deal with only a limited number of facts: considerations of time, of space and of knowledge enforce a rigid selection. Choice of the strategic factors is of primary significance. If the independent variables are correctly appraised, the exclusion of the dependent variables will not prove serious. The test of genius is not so much the discovery of new facts, as the discovery of new relations between old facts. Sex and illness were known to the ancients, but Freud was the first to disclose the rôle of sexuality in the genesis of the neuroses.

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Institutions are in the process of constant change. With the exception of history, the social sciences, though interested in the analysis of the present, are primarily concerned with the divination of the future. Hence, the search for the strategic is really a search for the emergent, which if successful may have most important consequences. St. Paul realized that the masses were seeking a new orientation; the *Gospels* helped greatly to condition that development. Adam Smith sensed the wide-scale dissatisfaction with governmental restraints; *The Wealth of Nations* helped speed the enthronement of laissez faire. The books of the great can influence social behavior, even though the great cannot directly control it. The reward for discerning the trend is the privilege of becoming the mouthpiece for the silent but aspirant multitude.

The constant alteration in the structure of society establishes a very high rate of obsolescence in the social sciences. The best work must soon become more or less inadequate. But the social sciences are monopolized by the universities, institutions whose entrenched interests and occupational routines lead to the enshrinement of the traditional. The new is uncertain and probably unsafe; what is worse, it frequently does not permit of imitation and that which cannot be imitated is of slight pedagogical value. It is hardly surprising to find therefore that the two outstanding contributions to modern economics were made by Marx, who never held an academic post, and by Veblen, who never achieved a full professorship. Likewise, the academic world might search in vain to match Trotsky's *History of the Russian Revolution* or T. E. Lawrence's *Seven Pillars of Wisdom*. The specialists will point out errors in each, many and serious errors. But in the social sciences the errors of commission are not nearly so serious as the errors of omission. The truth can never be more than suggested; it can assuredly never be captured in its entirety.

For many years to come the social sciences will probably remain the almost exclusive property of the university. New blood and red blood are essential for their health, but men who live within cloistered walls are frequently anemic. The Harvard Tercentenary by encouraging self-analysis contributed greatly to the disturbance of the established. Flickers and flutters are a sign of life and the more frequent the quiver and quake, the less the need for worry. One mourns only for the dead.

ELI GINZBERG

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REVIEWS

Social and Cultural Dynamics. By PITIRIM A. SOROKIN. Volume I: *Fluctuation of Forms of Art*; Volume II: *Fluctuation of Systems of Truth, Ethics, and Law*; Volume III: *Fluctuation of Social Relationships, War, and Revolution.* New York, American Book Company, 1937.—xxii, 745; xviii, 727; xviii, 636 pp. $6.00 each, or $15.00 for set of three.

Sorokin's *magnum opus* is an elaboration of a new philosophy of history. His aim is the discovery of a pattern or principle underlying the historical process, and the application of a scheme of analysis by means of which the infinite number and variety of events of human behavior and human achievement called culture could be organized and viewed as a whole. This aim is sustained by an age-old desire to give some meaning to the historical process, and to gain a point of orientation that would permit us to understand what happened and to predict future developments. The search for a meaning of history, which began with the crude thinking of pre-literate men and was renewed by each generation of philosophers for the last three thousand years, has yielded a wealth of all sorts of ingenious schemes of interpretation. But the fact that there were as many interpretations as there were interpreters has always been the weak point of the philosophy of history. Apparently, the manifestations of human behavior, and the relation of coexistence and sequence between them, are so richly diversified, so multiform in their possible combinations, that by a judicious selection of data any synthesis can be made plausible. In the majority of cases, philosophies of history are nothing more than attempts to demonstrate preconceived ideas, for example, as in the case of Spengler. At best they are the ventures of genuine philosophers, like Hegel, into the field of history in order to show the all-inclusive nature of their systems of thought.

Does Sorokin's work differ from that of his predecessors? It does differ, in the opinion of the reviewer, on several counts. First of all, no philosopher of history before him has sifted anything like the mass of material which Sorokin and his collaborators collected. As a result, the major points of the study are substantiated by a vast and impressive array of data covering all fields of history and cultural development. Secondly, Sorokin is well aware of the weaknesses

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in the works of his predecessors and, therefore, makes a deliberate effort to avoid them. The general impression one gains from his work is its freedom from the bias of preconceived ideas, its genuine effort of letting the facts speak instead of attempting to fit them into some pet scheme. His approach is inductive throughout. He writes not as a philosopher or prophet, but as a sociologist keenly aware of the methodological problems of his task, self-critically, and constantly checking his findings. Thirdly, his analysis is systematic. As he surveys the various types of human activities—art, literature, philosophy, ethics, government, economic and social relationships, war and revolution—he ascertains, first of all, the changing forms in each field, their duration and sequence. He then studies the determinants which operate in each field. Finally, he analyzes the relationship between the different fields of culture in particular periods. He uses empirical data as his point of departure and not for purposes of illustration as most of his predecessors did. He makes his synthesis after independent and exhaustive studies of each field that lead to the discovery of unanticipated common features.

In view of these considerations, Sorokin's work must be regarded as a distinct contribution which inaugurates a new type of synthetic effort, cognizant of the methods of scientific investigation, utilizing all the relevant findings of contemporary social science; in short, the type that fulfills a need which, in view of the mounting rate of monographic studies and specialized researches, is keenly felt by all students of human affairs.

How valid are Sorokin's findings? In the opinion of the reviewer the theory of fluctuations is demonstrated sufficiently to be regarded as valid. The theory conceives of the historical process as a *variable recurrent pattern* which "does not ascribe to an entire historical process or to all socio-cultural processes any perpetual tendency or direction which must be followed without change. It does not assume that social and historical processes must always proceed either along a straight line, or spirally, or in cycles, or in any other single manner or direction. Some social processes entire, and others in part, do indeed run along a straight line, but within definite limits after which they continue, here in loops, there in irregular oscillations, elsewhere in waves and in other different forms" (I, p. 186). The theory needs further elaboration particularly on the causes of fluctuations, which Sorokin discusses but does not analyze systematically.

Of great interest, but more hypothetical, is another general theory advanced by Sorokin. This theory postulates two basic types of

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culture, termed by Sorokin the Ideational and the Sensate respectively. The questionable feature of this theory is not its claim that the various forms of culture at a particular time and place are integrated, nor is it the logico-meaningful method used by Sorokin to ascertain this fact of integration. On the contrary, the search for integration, and the elaboration and use of the logico-meaningful method, constitute a major contribution of Sorokin's work. However, the method is not sufficiently reliable as yet to serve in demonstrating general propositions, especially when the propositions are on such a high level of abstraction as in Sorokin's theory. In the last analysis, therefore, the hypothetical nature of the theory is due to its reduction of all manifestations of human life to a dichotomy and the use of terms that are extremely general and flexible. For this reason, the conclusions which Sorokin draws from his theory, for example, on the future of Western civilization, are not as convincing as are the more specific and less spectacular findings, too numerous to mention, which materially advance our knowledge of social dynamics. But Sorokin would be the last person to attribute finality to his general theory of culture. His monumental study has opened a fruitful field of investigation. Rare indeed are the contributions that equal his in scope and importance, and for years to come it will serve the student of the philosophy of history as a source and a guide.

THEODORE ABEL

Leadership in a Free Society: A Study in Human Relations Based on an Analysis of Present-Day Industrial Civilization. By T. N. WHITEHEAD. Cambridge, Harvard University Press, 1936. —xv, 266 pp. $3.00.

This collection of somewhat miscellaneous papers is chiefly significant for two unintended reasons: as a rationalization of a fascist America to be run by and for businessmen, and as an evidence of what can happen to an alert mind bent to the purposes of a modern business school. The author is an assistant professor at the Harvard Business School.

Professor Whitehead takes off from a number of sensible statements in keeping with the "new" social science. He recognizes the complexity of the worker's motivation and the importance of strong primary-group memberships both in and outside of his work; also that the cash-nexus to one's job does not replace the need to live in a world of shared purposes. He deplores the increasing bifurcation

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of life into "business" and "the rest of living": "business organizations are the only widespread type of institution that has ever attempted to achieve stability as divorced from the main currents of social living, and the result is exactly what might be expected." "Society is becoming seriously and increasingly disorganized." "And the resulting social instability is so great as to threaten the industries themselves." He even goes so far as to say that "Every advance of industry has so far been accompanied by a corresponding impoverishment in social living." "The run of orderly human association has been neglected; and the only satisfactory solution is to recall this factor from the universe of things that can be neglected."

Then he goes off the deep end: Business having ruined the girl, he proposes a shot-gun wedding to rehabilitate not the girl but her seducer. Confronted by the confessed need to socialize business or to business-ize society, he chooses the latter. He blandly accepts business as embodying the central purposes of society. Business at present, he says, is working itself into a dead-end by its increasing apartness from the rest of living. "A real solution will only come when society is integrated around its major activity, business. . . . There is ground today for supposing that industrial nations expect their vitalizing organizations as well as their leaders to come from industry." At present industrial society "is being organized somewhat inefficiently by other [than its business] leaders who have no direct responsibility for the industrial activities. . . . Someone must take the lead in integrating social living, if civilization is to continue. . . . The solution is that the industrial leaders should become the social leaders." They should "organize it and lead it" so as to control the rest of living in the interest of greater security for private business. Nor is this dangerous counsel, for "business executives are apt to underestimate the security of their position as leaders."

Professor Whitehead misses the central meanings of modern capitalist control. The industrialist to him is a man dominated by considerations of technological efficiency, rather than money-making. It is his preoccupation with technology, rather than anything deeper-lying, that has allowed the situation to develop whereby "Large masses of industrial workers are showing evident dissatisfaction of one sort or another; they are not wholeheartedly assisting the economic purposes of business." Professor Whitehead attributes to hearsay the rumor that there is "an essential divergence of economic interests as between capital and labor." Viewing the modern separation between ownership and management, he says "the owner [has] faded

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away. . . . Thus the only vivid personalities left are a number of employees, some of whom are leading the others . . . ; but our old friend Capital can hardly be represented in the persons of the hired management." Shades of Marx, Veblen and Tom Girdler!

ROBERT S. LYND

Is It Peace?: A Study in Foreign Affairs. By GRAHAM HUTTON. New York, The Macmillan Co., 1937.—364 pp. $2.50.

According to Mr. Hutton, this is a "selective" survey of British foreign policy—a policy which should be viewed "not only from the angle of the immediate events and contingencies which evoked it, but also from the historical, sociological and economic standpoints." In this effort he has woven together threads from many sources, and has produced a sort of tapestry which, while a good job of weaving, is a gloomy picture to look at. The theme—perhaps I should say, the warp—is to be found in these words: "It is no violence to history to say that whenever a British Government heard the first faint footsteps of the march of world events, it began to draw out of the vanguard into a position from which it could observe without participating. But while this semi-conscious, semi-instinctive British habit in face of great events has secured British isolation for a season, we have seen that isolation turns to rapid participation as soon as the great events threaten 'British interests'" (pp. 29-30). But now —and perhaps this is the woof—"the time for reasonable certainties in Europe has been allowed to pass, and now British foreign policy has to be trimmed to cover terrible uncertainties" (p. 352).

Seldom in history have the countries of Western civilization been so sharply divided in their interests as they are today; and the division —here Hutton quotes President Roosevelt—is between those who want peace and those who want war. Unfortunately, Great Britain cannot be isolated as can the United States.

The study begins with the Far East; the author quotes General Smuts who said in 1921: "The problems of the Pacific are . . . the world problems of the next fifty years or more." Here he is concerned with Hongkong. When Japan and China fight (as now they are) and Japan demands that Hongkong be closed to Chinese trade, what will Great Britain do? If she accepts Japanese dictation, she must retreat to Singapore; but Singapore will be meaningless if Japan is supreme in the China Seas. "These are logical implications of the train of events which was set going, and allowed to proceed, in 1931 and 1932." Incidentally, the reviewer wonders why Mr. Hutton

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chose 1935 instead of 1931 as the sad year which will be a chronological watershed for historians.

We turn then to France and Germany; Mr. Baldwin said, in 1936, that there can never be permanent peace in Europe so long as there is "secular suspicion" between these countries, and that suspicion has continued since the days of Charlemagne. Post-war negotiations led to Locarno because England was unwilling to generalize her commitments; and Locarno died when England would not act against Hitler. Now German foreign policy has shifted the focus of European diplomacy from the Rhine to the Vistula and Danube and Mediterranean; its primary purpose today is to separate France and England. The French, for their part, are obsessed with the idea of security and have sought to build a ring of alliances around Germany. The result of all this was to destroy the Weimar Republic; Hitler is the product of "a sense of grievance so strong that it overwhelmed the exercise of restraint and reason" (p. 105). Since France and Germany could not coöperate in the East, the Franco-Soviet treaty appeared, Locarno was torn up, and eastern Europe was divided in two camps. And since France and England did not call Mussolini's bluff in Abyssinia, he and Hitler can now dictate the foreign policies of Great Britain and France.

Chapter vii studies the foreign policy of the British Commonwealth, and chapter viii the position of the League of Nations. By the time Germany reoccupied the Rhineland, "the assumptions on which the League and its Covenant had been founded were utterly stultified by a sequence of events which, if French and British politicians had been statesmen of vision and energy, need never have taken place." By 1936, the initiative in European policy had passively passed to Germany and Italy—what has been lacking in the last representatives of individualism and democracy? (p. 282)

The rest of the book is a damning indictment of British foreign policy which has put democracies at dangerous disadvantage alongside of dictatorships. "Is it Peace?" It can be for Great Britain—for a price, and almost any price is worth paying; but it is not a page which a British citizen can contemplate with equanimity.

It is a gloomy picture which Mr. Hutton paints, but this reviewer can find no fault with his reasoning or with his conclusions. He is very courteous to the United States; but the weaknesses of which he complains apply also to the foreign policy of the United States, and American citizens can read it with their own country in mind.

CLYDE EAGLETON

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War and the Private Investor. By EUGENE STALEY. Garden City, Doubleday, Doran and Company, 1935.—xxv, 562 pp. $4.50.

This challenging book reports an inductive investigation, advances a thesis and proposes a program. The investigation deals with selected cases of international friction since 1880 in which interests of private investors have figured. Professor Staley summarizes these cases, partly on the basis of monographic literature, but in a few instances from primary sources. The material is arranged neither historically nor geographically, but rather with reference to the type of relationship between investors and diplomacy which is principally exemplified by the case. Diplomacy in the service of investors is illustrated by episodes concerning Samoa, Persia, Venezuela, Haiti and Mexico. The Yalu river incidents and the occupation of Tripoli are used to illustrate the use of investments as a tool of diplomacy. Similarly there are cases which reveal how investors influence governments and how governments influence investors. It is admitted that the conquest of Tunis and the Chartered Company represent a more complex intertwining of considerations. Descriptive summary alternates with analytical chapters drawing upon a wider induction. Professor Staley's results in this section of his book, while not strikingly novel, are highly serviceable in recalling the complexity of motivation in international affairs. He shows beyond a doubt that investors are tools as well as stimuli of diplomatic action.

But Professor Staley would go farther. His thesis, emphasized especially in the introductions by Professor Quincy Wright and Sir Arthur Salter, is that the investment relation is more often that of tool than primary stimulus to diplomatic friction. It is a tool especially because of the general acceptance of the doctrine of unilateral national protection. The precise scope of this thesis needs emphasis. Professor Staley is not engaged in a general discussion of the causes of war or of international friction. He is dealing only with immediate causes, and only with those immediate causes in which private investments play a rôle. "Private investments", moreover, as here used, exclude loans by private persons to foreign governments. Thus the much-mooted problem of anxious bondholders is not considered. Moreover, the author is at points (pp. 357-58) explicitly aware that his sharp dichotomy of motivation between private capital seeking business profits only and diplomacy seeking more general objectives is at least somewhat artificial.

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It is surprising, therefore, to find him resorting to the doubtful method of statistical analysis to support his position. It may be granted that the sample is adequate. The questions that must be asked, however, are highly pertinent to all attempts to apply statistical technique to complex social processes. Are such data as purposes and motives classifiable and comparable? What weighting should be accorded cases of a prolonged or recurrent character, or which involve relatively distinct episodes? What weighting should be given cases of briefer but more widespread friction? These unanswered questions are pressed because the reviewer does not wish to lay stress upon the fact that Professor Staley's own tabulation (pp. 370-71) seems to yield results contradictory to his thesis. It appears here that, while several episodes are reported as involving both business and "patriotic" investments, the former interest is checked in a total of twenty-six cases as compared to twenty-four for the latter. The complexity of the tabulation may have concealed this elementary and embarrassing situation from the author.

The reviewer has nothing but praise for Professor Staley's desire to define his problem in rigorous terms. This is feasible, however, only if one eschews programs. The sharp separation of investor protection from other diplomatic objectives (which are admitted to include many economic considerations) may be fruitful for comprehension. But as a guide to action it simply leads one to overlook the relation between the economic and the political order.

Thus, as Professor Staley undertakes to formulate a policy for the protection of private investment in politically backward and industrially underdeveloped countries, he negligently thrusts into the background most of the business environment of the modern state. He rejects anti-imperialism partly for the typically expansionist reason that development of backward countries is good for them and advantageous for the investing countries. He rejects national supervision of the conditions of investment as likely to enhance friction. He concludes that the proper course would be denationalization of all foreign investment and supervision by a world investment commission and a world commercial court, implying international incorporation and eventually a world investment bank. If we had these things one source of international friction would be removed. But "it is all too evident", he concedes (p. 517), "that the measures and devices proposed . . . cannot even be tried, unless there is a sufficient sense of world citizenship". In which case what would become of the problem Professor Staley seeks to solve? One

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further point strains the not inelastic credulity of the reviewer. Does Professor Staley really envisage a society of capitalistic states setting up a socialized international (beg pardon—mondial) economy? If he does not, and if he concedes that the achievement of a national investment commission or some other socialistic device would be a necessary internal step, what would become of the private investment interest which he has so rigorously defined?

LELAND H. JENKS

WELLESLEY COLLEGE

Population Pressure and Economic Life in Japan. By RYOICHI ISHII. London, P. S. King & Son, Ltd., 1937.—xix, 259 pp. 12s. 6d.

This work attempts an analysis of the intricate question of Japan's social and economic development as reflected in the trend of the population movement. Because of his nationality, the author has been able to rely almost exclusively on Japanese sources, which he has carefully translated with the exception of some obvious mistakes in the transliteration of proper names. His work will be valuable not only to students of population problems, but also to those who are interested in having original Japanese material at their disposal. His conclusions, which relate to specific problems rather than to the question as a whole, are reinforced by more than a hundred statistical tables.

The brief résumé of population trends before 1868 is one of the weakest parts of the volume, for it fails to contribute anything to information already available in the Occident and overlooks Yanagisawa's "Histoire critique des travaux statistique au Japon depuis l'antiquité jusqu'à la restauration imperiale", *Bulletin de L'Institut Internationale de Statistique, 1911.* The fact that the economic consequences of the Reformation of 1868 and the concomitant change from a purely agrarian economy to an industrial one were not felt until after the Sino-Japanese War is emphasized. The population problem at that time centered in the movement for the abolition of abortion and infanticide, which had held the population in check, and the improvement of the racial stock. Obviously, a rapid industrialization ensued; the population increased 31 per cent up to 1895 and Japan changed from an exporter to an importer of food. The increase for the next forty years was approximately 68 per cent, a direct result of a rapidly decreasing death rate and not an abnormally high birth rate.

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With the exception of a short but critical study of the various methods of estimating the population after 1872, the remainder and greater part of the book is devoted to an analysis of the regional and occupational distribution of population, its demographic analysis, rural economy, colonization, birth control, and finally industrialization as a remedial measure. Each of these subjects is studied separately for whatever light may be thrown on the fact that "Japan now embraces 69 million people and is faced with the problem of finding a place for herself in the world" (p. 85).

Dr. Ishii emphasizes, less than Professor E. F. Penrose, in *Population Theories and Their Application with Special Reference to Japan*, the effect already produced by birth control and the decline in the fertility rate in checking Japan's annual population increase of a million people. He predicts that the future supply and demand of food, especially rice and wheat, will be met during the next generation, even though the population will doubtless be between eighty and ninety million. This will be possible because of a proposed increase in area and productivity of land in Japan proper and a greater importation of rice from Korea and Formosa.

If such a program is effectively carried out, the problem resolves itself, in the author's mind, into finding employment for the working population during the next twenty years. It is estimated that 400,000 people, exactly double the number quoted by Penrose, will seek employment yearly in Japan's economic system. Apparently no outlet will be found in emigration for "the government has spent millions of yen in encouraging emigration which amounted to less than 20,000 persons, while twice that number of Koreans have migrated to Japan annually" (p. 208). The real test of Japan's social system and economic resources will be the successful absorption of these new workers into the economic structure. Though the figures from the census of 1930 show that 96 per cent of the recent increase in population was taken care of by the urban industrial districts, "the improved industrial methods of productivity . . . do not necessarily imply a corresponding increased capacity of population absorption in these urban industries" (p. 86).

Coming at a time when apologists for Japan are pleading that population pressure necessitates the present movement toward territorial expansion, it is refreshing to have a study treated in such an objective manner. Though the author concludes (p. 247) that "the promotion of international cooperation for freedom of trade and for access to certain essential natural resources (within or without the

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nation's boundaries) must be accepted as the fundamental basis of Japan's external policy", he also believes, however timidly he presents the idea, that carefully planned industrialization and a more equitable distribution of the nation's wealth will help solve the problem.

HUGH BORTON

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The Manchu Abdication and the Powers, 1908-1912. By JOHN GILBERT REID. Berkeley, University of California Press, 1935.—xiii, 497 pp. $5.00.

In this volume Mr. Reid presents a detailed account of the scramble of the Western powers for concessions in China during the years 1908 to 1912. Basing his study upon the documents published since the War by Occidental countries, the author shows how the diplomatic sparring of the powers made the Manchu government's position untenable and helped to precipitate the revolution of 1912.

President Theodore Roosevelt refused to challenge Japan's position in southern Manchuria, because he knew that the American people would not fight for such a cause, and he, therefore, wished to avoid encouraging the Chinese to oppose Tokyo in the hope of getting aid from the United States. The result was the failure of Tong Shao-yi's efforts in 1908 to negotiate a German-Chinese-American agreement to preserve the territorial integrity of the Celestial Kingdom. The Root-Takahira notes, under the terms of which the United States and Japan recognized each other's claims to the Philippines and Korea, respectively, sounded the death knell to the hopes of Tong and sent into retirement Yuan Shi-kai, a diplomat whose services China could ill afford to lose.

With the inauguration of Taft, American Far-Eastern policy became more aggressive, as evinced by Secretary of State Knox's attempt to buy the Chinese Eastern and South Manchurian Railroads from Russia and Japan, with the purpose of internationalizing them. In case the Japanese refused to sell their line, Knox hoped to build a parallel line from Chinchow to Aigun, a concession for building which the Americans had secured. He failed to realize that Japan, having sacrificed men and money in southern Manchuria, would not relinquish her rights willingly. The attempt was foredoomed because England, long the champion of the open door, could not afford to weaken the Triple Entente and the Anglo-Japanese Alliance by

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thwarting the interests of Russia and Japan in Manchuria. For similar reasons, France supported her ally, Russia. Germany was anxious for American friendship in order to keep Washington out of the anti-German group, but insisted that the United States take the lead. The net result of Knox's plan was a Russo-Japanese agreement in 1910 to resist jointly any attempts to limit their interests in Manchuria.

Peking was likewise embarrassed by Western demands for the privilege of lending China money to build railroads. Capitulation to such demands aroused the antagonism of the local officials, who viewed such action as subserviency to the Occidental powers. Unfortunately for China, death robbed her of the services of Chang Chih-tung, director of the Hukuang Railways, who might have successfully combated such opposition. Peking was at the same time preparing for the summoning of a constitutional parliament which necessitated considerable preliminary planning, some of which aroused hostility to the government. Negotiations about opium presented further difficulties. These problems had to be faced without the steadying influence of the Empress Dowager, who had died in 1908. The fact that the Emperor was a mere child also encouraged some opponents of the Manchus, who might have remained silent had the Son of Heaven been more mature. When the revolution broke in 1911, Yuan Shi-kai was recalled to power, but it was too late, and even he was harassed by a lack of funds while the Western powers refused to lend him the necessary money.

Mr. Reid's account is thoroughly documented and is a minute piece of research work which gives a clear picture of how the European situation helped to undermine the Chinese government. It is a welcome contribution to the history of pre-war diplomacy.

R. Stanley McCordock

Lincoln Memorial University

Diplomatic Commentaries. By Viscount Kikujiro Ishii. Edition of April 1931. Translated and edited by William R. Langdon. Baltimore, The Johns Hopkins Press; London, Humphrey Milford, Oxford University Press, 1936. — xxiv, 351 pp. $3.25.

One of the most distinguished of Japanese statesmen, Viscount Ishii, published in March 1930 for Japanese readers a volume on Japanese diplomacy. A third and revised edition appeared in April 1931. The present English volume is a translation of those portions

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of this third Japanese edition which are of especial value to Western readers. This book is important for the authoritative information it contains and for the light it throws on the views and principles both of the author and of a large proportion of the civilian statesmen who have directed Japanese foreign policy during the past three or four decades. It interprets sympathetically for American readers Japanese civilian leadership at its best.

Viscount Ishii, like many other Japanese of his class, is both a strong nationalist and a strong liberal. His nationalism is shown by his belief that Japan keeps its treaties and venerates its word (p. 34); that its wars with China in 1894 and with Russia in 1904 were defensive (p. 268); and that its annexation of Korea was necessary for the preservation of peace in the Far East (p. 80). His liberalism is evident from his strong opposition to militarism, both at home and abroad, and from his support of limitation of armament, multilateral international conferences, arbitration treaties, the Kellogg-Briand Treaty, and particularly the League of Nations, in whose counsels at Geneva he played a distinguished part (pp. 169-172). Japanese militarism is frequently condemned throughout the book; to it he charges a number of mistakes in Japanese diplomacy, including the expedition to Siberia in 1918 (p. vii), the Nishihara loans (p. vii), and Tanaka's Tsinan expedition in 1927 (p. viii). He warns his Japanese readers that "as militaristic influence is at the root of aggressive policies, it must be checked in time" (p. 269); but in another section he admits—with prophetic foresight judged by developments in Japan since 1931—"It is a general rule that in a conflict between military and civilian groups, the former emerges victorious" (p. 61). To the Japanese people he says: "As the first step toward establishing international peace, the system of settling disputes between nations by pacific means must be adopted"; and, "The times require that Japan should give support to arbitration treaties and to the movement of disarmament" (p. 270).

In regard to Japan's important diplomatic negotiations and its relations with other states, the author presents much authoritative information, although he reveals few diplomatic secrets; but of especial value are the statements of his own views, his explanations of the reasons which led the government to important decisions, and his interpretation of Japanese official action. Of the negotiation of the famous Lansing-Ishii Agreement, a detailed account is given which, although throwing light on the opinions of Ishii and the

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Japanese government, is not new, since this portion of the Japanese edition has already been translated and published, at least in large part, in a number of American books and journals. His account should be compared with that of Secretary Lansing as given in his posthumous *War Memoirs*. The latter volume reveals the fact, not mentioned by Viscount Ishii, that in addition to their published agreement they also signed a secret protocol which bound both Japan and the United States to refrain from taking advantage of the disturbed conditions then existing in China to seek special rights or privileges in that country which would violate the open door or the integrity of China. In regard to the Anglo-Japanese Alliance a detailed explanation is given of the tangled negotiations which preceded it and of the attitude of Marquis Ito. By the time of the Washington Conference, 1921-22, however, the alliance, the author believes, had largely fulfilled its mission, but he deeply resents the action of Great Britain at the conference, "so lacking in chivalry", by which it discarded the alliance "like an old pair of sandals" (pp. 59-60). In his explanation of the reasons for Japan's declaring war against Germany in September 1914, which he states was due in part to "the spirit of the Anglo-Japanese Alliance" (p. 85), he throws no light on the disputed question whether the British government actually asked Japan to enter the war or the Japanese government sent its ultimatum to Germany against the wishes of Great Britain. In discussing the negotiations at Portsmouth at the close of the Russo-Japanese War he gives an interesting account of his own part in inducing the Japanese government to insist on retaining Southern Saghalien (pp. 68-9). On many other issues his explanations and interpretations are illuminating; particularly is this so as to the reasons for Japan's finally signing an agreement with the Allies to carry on the World War and to make peace in common.

Of greatest value to American readers, naturally, is the author's treatment of Japan's relations with the United States and with China. Toward our country he shows a friendly spirit, tempered by a realization that important issues divide us. He praises Commodore Perry for his opening of Japan and Theodore Roosevelt for his part in connection with the Portsmouth Conference; he expresses admiration for Woodrow Wilson; and he speaks highly of the Washington Conference and the naval sacrifice made by the American government for the cause of peace in the Pacific. But he deeply resents the statutory exclusion of Japanese from the United States and states: "Serious thinkers everywhere recognize that the

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discovery of a satisfactory solution of race and immigration problems constitutes the chief task of statesmen and diplomatists in the future" (p. 315). In regard to China, he concludes that Japan, due to its geographical situation, orderly government and economic needs, has of right special interests and a special responsibility. As he expresses it, Japan "cannot continue her existence without China"; "In the same proportion as Japan's interests in China are incomparably wider and more vital than those of other nations, so should her responsibility and voice in matters pertaining to China be immeasurably greater" (p. 129). The denial of these claims by the United States and other Western powers constitutes the fundamental international issue in the Far East.

In view of the development of Japanese policy since 1931, when the last Japanese edition of this book was written, it is particularly interesting to note that Viscount Ishii states that Japan stands strongly for the open door in China. As for China's territorial integrity he says, "it is vital to Japan—as indispensable to her as lips are to teeth and wheels to axle—and to preserve it Japan has not hesitated to stake her national existence" (p. 86). Manchuria, it was stated with insistence, was definitely a part of China (p. 81).

GEORGE H. BLAKESLEE

CLARK UNIVERSITY

Commodity Control in the Pacific Area: A Symposium on Recent Experience. Edited by W. L. HOLLAND. Stanford University, Stanford University Press, 1935.—452 pp. $5.00.

Trade and Trade Barriers in the Pacific. By PHILIP G. WRIGHT. Stanford University, Stanford University Press, 1935. —xvi, 530 pp. $4.00.

These two works on the Pacific area have been published under the auspices of the Institute of Pacific Relations and for that reason, rather than because the problems they consider are peculiar to or inseparable from the Pacific, they emphasize that area. *Commodity Control in the Pacific Area* is a symposium of independent studies of various economic control schemes practiced in some of the countries bordering on the Pacific. In spite of the fact that each contribution is an independent study, there is a definite unity to the volume in the collective story. The authors are all well chosen; they have written objectively and their work as a whole is singularly even.

The volume begins with two studies on the American experiment in agricultural adjustment. Chapter one, by Professor Joseph S.

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Davis, well known for his work with the Food Research Institute at Stanford University, is a summary of the principal operations of the first year of the Agricultural Adjustment Act. It outlines the situation confronting the A.A.A. at its inception and its subsequent program of operation and describes the Administration's experience with the various control schemes for cotton, wheat, corn-hogs, dairy products and tobacco, with an addendum on the drought of 1934 and its effect upon the agricultural adjustment problem. Chapter two is an analysis of the lessons to be learned from the stabilization operations of the Federal Farm Board and was written by E. S. Haskell who was Agricultural Economist with the A.A.A. The next chapter, by Professor H. S. Patton, is concerned with the closely related problems of Canadian experience with wheat pools.

Two Japanese professors, Seiichi Tobata and Taikichiro Mori, contribute excellent chapters on the control schemes which have been tried for rice and silk in Japan. As Japanese control has a long history and is not, as in most of the other cases, a post-war depression expedient, these chapters are particularly interesting examples of economic control. Australian experience contributes two chapters, one on control in the sugar industry and its relation to the international sugar situation, and the other a more general consideration of the Commonwealth's whole policy of protection and control in its relation to the "White Australia" policy. These two chapters have been written by Australians, J. B. Brigden, Director of the Queensland Bureau of Economics and Statistics, and G. L. Wood, Professor at the University of Melbourne. There are in addition chapters on commodity control in Netherlands-India, export control boards in New Zealand, coöperation in the Hawaiian pineapple industry, petroleum control in the United States, and the international restriction schemes for tin, rubber and the conservation of fisheries in the North Pacific.

In the second of these two volumes, *Trade and Trade Barriers in the Pacific*, an impressive and useful body of facts and statistics has been assembled in an orthodox presentation of the case for free trade. Tariffs are treated too generally as the cause of international conflicts of which they are often simply manifestations and not enough consideration is given to surrounding factors. In discussing the basis of the clash between Japan and China, the author states that, "So long as China's nationalistic spirit was held in abeyance, a large and mutually advantageous trade expanded, Japan exporting the products of her factories to China—cotton goods, refined sugar, paper, glass,

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pottery, and buttons—and importing raw cotton, soya beans, oil cake, iron ore, coal, cotton seed, hides, flax, China grass and ramie, and other materials, for her industries." The author's implication is that if China had placed no obstacles in the way of this trade, harmonious relations between the two countries would have prevailed. He does not point out that this trade in cheap manufactured goods from Japan has accelerated and completed the destruction (which was only begun by British goods) of the indigenous Chinese economy. In Japan the trade was building a new order, but in China it was destroying the old. Such a trade can hardly be called mutually advantageous. Pursuing this theme the author continues: "In recent years, however, China has reasserted her tariff autonomy. The duty on cotton and white sheeting which was 5 per cent previous to 1926 was raised in that year to 7½ per cent, in 1929 to 10 per cent and in 1930 to 12½ per cent. She also increased her duties on knitted goods and cotton yarns. Sheltered by these increased duties, she has set up cotton factories equipped with modern machinery. These duties on cotton goods are low compared with those levied by other countries, but they are ominous for the future of Japan."

The facts are that there was already, before 1929, a cotton mill industry in China dating back to the end of the last century; that since 1929 the number of spindles has increased by 1,326,000, but of that number 60 per cent have been installed by Japanese capital, some of them in Manchuria which is no longer under the Chinese tariff; and that a large part of the new spindles in China proper have been installed in the last few years when large scale smuggling under Japanese protection has rendered the Chinese tariff quite ineffective.

The scope of the book is limited to the member nations of the Institute of Pacific Relations and covers the trade relations of Australia, Canada, China, Manchuria, Hongkong, Japan, Netherlands-India, New Zealand, the Philippine Islands, British Malaya, Siam, Indo-China and the United States, with the world and with one another. Great Britain, the Netherlands, Hawaii and Soviet Russia, which also have representation in the Institute, have been treated only incidentally. For the countries named, data are presented on the principal items of trade and the tariff encountered or imposed is given for each item. The material on tariffs is necessarily dated and somewhat generalized. The statistical data which constitute the bulk of the book are presented in a simple and usable form.

JOHN E. ORCHARD

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The Testimony of Kolchak and Other Siberian Materials. Edited by ELENA VARNECK and H. H. FISHER. Translated by Elena Varneck. Stanford University, Stanford University Press; London, Humphrey Milford, Oxford University Press, 1935.—xi, 466 pp. $5.00.

The English-speaking students of Russian history owe a debt of gratitude to Professor Fisher for the English version of this very valuable historical document, Admiral Kolchak's testimony. At the moment of making his depositions, Admiral Kolchak knew what was awaiting him. In the words of the Vice-chairman of the Commission, "he did not expect, and could not expect, to be saved, and for that reason made no attempt to grasp at straws". According to the same witness, his bearing during the examination was that of a captive commander of a defeated army and was entirely dignified, offering thus a striking contrast to the conduct of the chief defendants at the recent Zinoviev-Kamenev trial in Moscow.

K. Popov, Vice-chairman of the Extraordinary Investigating Commission, in his preface to the Admiral's testimony, calls Kolchak a typical fascist leader. It would be impossible to make a more misleading statement. There was not a grain of Mussolini or Hitler in the make-up of the Supreme Ruler. A poverty-stricken naval officer, Kolchak was the son of a naval officer who had been connected with government munition works. His life taught him to face and to subdue nature in his polar expeditions, to deal with rigidly disciplined groups of officers and men of the Imperial Russian Navy. It did not provide him with any experience in dealing with human masses suddenly torn from their traditional moorings. His attempt to maintain the discipline and fighting spirit of the Black Sea Fleet in 1917 revealed his remarkable qualities, as well as his complete lack of understanding of political forces and of the principles of political leadership. One might venture the suggestion that years of struggle with nature and, later, the command of ships and fleets unfitted him for the rôle of a political leader. Even his great personal magnetism and considerable endowments as an orator could not offset the fatal lack of experience in organizing a state, an improvized army or a party.

Whatever his failings as a political leader may have been, Kolchak stands forth from the pages of the testimony as a remarkable man with a definite set of political convictions. He regarded his dictatorship as a temporary expedient, believing that the ultimate political organization of Russia must be dealt with by a future constituent

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assembly. He considered himself primarily a military leader entrusted with the task of defeating the Red armed forces, and did not attempt to formulate a concise political program of his own or establish a political party. Kolchak was a nationalist, but not a fascist. He worked for years in close contact with the Gosudarstvennaia Duma and there is no reason to doubt his statement that he welcomed its influence as a democratic institution (pp. 43, 47). His reference to the republican form of government as one which would meet the needs of the country (p. 49) is undoubtedly in complete conformity with his feelings. At the same time it would be impossible to classify Kolchak as a consistent liberal of a republican trend of mind. His viewpoint, as reflected in his testimony, shows that he held an eclectic position with regard to the form of government and felt that good, or for that matter bad, results might be achieved by a state regardless of its governmental structure (pp. 43, 49).

The first part of the volume, which comprises Kolchak's testimony, has a great historical value, not only as an enlightening commentary on the processes of reconstruction of the Russian Navy after the Russo-Japanese War, on the events in the Black Sea Fleet in 1917, and on the Japanese efforts to disrupt the national Russian movement by subjugating them to their own interests, but as a valuable illustration of the political views and motives of one of the best representatives of an important group of servants of the Russian state, which formed the backbone of imperial administration.

Ovchinnikov's "Memoirs of the Red Partisan Movement in the Russian Far East", which forms the second part of the volume, is inferior to the first part in interest and in value. The author is a very superficial observer and fails to clear up some of the important points in the events covered by his narrative. For instance, the possibility of the Alexandrovsk "revolution" being instigated by the Japanese apparently never occurred to him, despite the incongruous rôle played in it by one of the most prosperous citizens, Shevchenko. The documents on the Nikolaevsk massacre and Vladivostok Incident, which form the last part of the book, are useful though not conclusive.

Kolchak's testimony, particularly in its first part, deals with naval matters. It is regrettable, therefore, that the translator did not make any effort to master naval terminology—Russian or English. The editors are not free from blame. They mistook Kaiurs (p. 14) for a name of a Siberian tribe and permitted the use of the word

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"cutters" instead of "launches" (p. 75). (Kolchak was here referring to the fast motor launches built in America which were used by the Russian Black Sea Fleet.) These minor errors on the part of the editors might be overlooked; but one cannot condone their obvious lack of knowledge of the historical and literary background of some of the events referred to in the testimony. This is manifest in their allowing the use of a question mark on page 86, after the word "liquidation", since it is quite clear that the sentence refers to the winding-up of the affairs of the Gosudarstvennaia Duma. Another example is found in footnote 23. How any one familiar with the works of Count Albert Vandal could have thought that he defended the necessity of an alliance of Russia with Germany (p. 22) is entirely incomprehensible. The author to whom Kolchak refers on that page is A. Vandam, a well-known Russian writer on politico-military subjects. His best known book is *Nashe Polozhenie* (*Our Situation*), published in 1912. Kolchak probably alluded to this book.

This criticism does not imply, however, that the footnotes, as a whole, are valueless. On the contrary they contain a great many interesting data. One is tempted to draw the conclusion that the editors are familiar with the literature dealing with events in Siberia, and that their Russian correspondents have supplied them with a great deal of accurate information concerning naval officers and naval events mentioned in the testimony. It is only when attempts are made to comment on matters outside of this frame that they blunder into mistakes like the one concerning Vandam.

The Hoover War Library and Professor H. H. Fisher are doing a very important and useful work in the field of Russian history. Technical errors and inconsistencies are matters that can be easily adjusted. No doubt later volumes will be free of them. Students of Russian history in America await with interest the appearance of further publications under these auspices.

D. Fedotoff White

Philadelphia

Medieval Representation and Consent. By M. V. Clarke. London, New York and Toronto, Longmans, Green and Co., 1936.—vii, 408 pp. 18/–; $7.00.

Maude Violet Clarke was a medievalist of solid achievement. Her book on the medieval city state is a scholarly survey, and she succeeded in throwing some light on the difficult and obscure subject of early Irish parliaments. Shortly before her death she completed

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the typescript of the present volume, but she did not live to see it through the press. That office was performed by two of her associates at Somerville College, Oxford. Her original intention was to write a short monograph on the *Modus Tenendi Parliamentum*, a tract that has been variously appraised, but in her attempt to determine its date, meaning and validity she was led to a widely ranging investigation of medieval parliamentary institutions, the results of which are before us in this volume.

The *Modus* has had an interesting, not to say exciting, history. It seems to have enjoyed a high reputation from the reign of Richard II onwards. Early in the fifteenth century it must have been regarded as an authoritative description of parliament, for it was transmitted to Ireland for the guidance of the lord deputy in holding parliaments there. In Miss Clarke's opinion, it had great influence on the development of the Irish parliament. The controversies over parliamentary privilege in England in the late sixteenth and in the seventeenth century led to a renewal of interest in the *Modus*. Lambarde made use of it in his treatise on the procedure of the house of commons, and it supplied Elsynge with the title of his manual. Coke accepted it uncritically and, on the strength of its wholly unreliable opening paragraph, stated that it had been written before the Norman Conquest. Prynne, on the other hand, pronounced it to be a "modern consarsination", written about the end of Henry VI's reign by "some unskillful Botcher". Selden came much nearer the mark in attributing it to the reign of Edward III. Some modern historians have had harsh things to say of it. Stubbs regarded it as historically worthless, and it has been commonly treated in Professor Pollard's words, as "a fanciful sketch of no authority". Pollard himself, in his *Evolution of Parliament*, dealt with it respectfully. So, in even greater measure, did Miss Clarke. There is an Irish as well as an English version of the *Modus*. Both of them are reproduced in an appendix to this volume. The text of the latter is based upon a collation of sixteen manuscripts with an edition published in 1846; the text of the Irish version is that of an *inspeximus* of 1419.

If we seek for the origins and early development of national assemblies based on representation and consent, extant parliamentary records give us little information. It is because they are evasive and obscure on this side, Miss Clarke believed, that recent historians who have used these records have slurred over what was, in her view "most remarkable about the sessions of early Parliaments, the com

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ing together, with increasing regularity, of representatives of every grade of free society." Not lightly, she thought, ought we to discard a document "which is a set description of the Parliament of estates, written on a simple and logical plan and with a general meaning that is perfectly clear", a document which implies that parliament "rested ultimately on the principles of representation and consent". In these words she characterizes the *Modus*.

It is the earliest of a long succession of books written for the glorification of parliament, and it is strangely modern in spirit and tone. The assembly described by its author is radically different in basis and organization from that which Maitland so brilliantly reconstructed for us in the famous introduction to his edition of the roll of Edward I's Lenten Parliament of 1305. One of the basic ideas of the tract is the ascendancy of the commons, who constitute three of the six orders (*gradus*) of which parliament is said to consist, viz., proctors of the clergy, knights of the shire and burgesses. And the reason for their superiority is because they are representatives. Unlike the magnates, ecclesiastical and lay, they come to parliament not *per se* but as representing their communities. "The author of the *Modus* sets up the consent of the community to taxation as the key-stone of his arch of Parliament; the governing ideas of the whole document are thus representation and consent."

It is impossible within present limits to follow the author in her somewhat labyrinthine excursions into such subjects as "Ecclesiastical Consent to Taxation under Edward III", "The Irish Church and Taxation in the Later Middle Ages", "Proctors in Parliament and in Convocation", "The Commonalty of the Realm in Parliament" and "The Composition and Procedure of Early Parliaments in England", to name the titles of some of her chapters. On all of these subjects, and on others, her discussion is based on careful and detailed investigation, and her opinions are carefully considered. From a wide variety of evidence relating to matters dealt with in the *Modus* Miss Clarke concludes that it was written in 1322. Almost exactly the same conclusion was reached by Professor William A. Morris in his article entitled "The Date of the 'Modus Tenendi Parliamentum'" (*English Historical Review*, July 1934). Professor Morris was convinced that its was written in preparation for a parliament that met in the summer of 1321. The author mentions this article in a footnote, only to say that the greater part of her book was written before it appeared; she makes no use of it.

ROBERT LIVINGSTON SCHUYLER

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The Middle Classes, Then and Now. By FRANKLIN CHARLES PALM. New York, The Macmillan Company, 1936. — xiv, 421 pp. $3.50.

During the last thirty years historical literature has become vastly enriched by the study of economic and social forces. Werner Sombart, Henri Sée, William Cunningham, and scores of others have made available to the scholar great storehouses of information concerning the formation of social classes, their character, and their importance in the growth of modern institutions. Many lesser lights have popularized this knowledge until today even the most elementary discussions of our contemporary scene are filled with glib generalizations about class struggle, the virtues or evils of the *bourgeoisie*, and the exploitation of the proletariat. Up to the present time, however, the layman has not had a good historical synthesis of the middle classes by which to give his judgments perspective. Such a synthesis Professor Palm has endeavored to provide. The result of his efforts should prove valuable to the general reader and helpful to the student.

The author of *The Middle Classes, Then and Now* begins his study by analyzing and defining classes in our present-day society. Capitalists, he explains, are persons whose income is based on invested capital; proletarians, those who are dependent on the sale of their labor for a living; and *bourgeois* or middle-class persons, those whose source of revenue comes "from a combination of their own labors plus invested capital." He remarks that these categories are somewhat arbitrarily drawn and his succeeding historical account bears out the fact that it is difficult to define such complex entities as classes.

After having stated what classes are, Professor Palm goes on to show in a few pages that in ancient Egypt, Greece and Rome there were capitalists whose mentality was not greatly different from that of present-day capitalists. His obvious lack of familiarity with the ancient period, as well as the short compass of his treatment of the era, makes this section the weakest part of the study. His account becomes fuller and more convincing as he advances through the later middle ages and into early modern times. This is only natural, for it is the period of the rise of modern capitalism and the formation of the class with which the author is mainly concerned. It is interesting to note in this section that Professor Palm believes that mercantilist policies had a definite class connotation—that they benefited the rising *bourgeoisie*. The reviewer believes that the author is justi-

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fied in this interpretation and, furthermore, that he is correct in explaining that mercantilism was not exclusively based on the theory of bullionism, but that it comprised economic measures of various kinds which aimed to enhance the economic power of the state.

Stress is placed upon the French Revolution as a great step forward in the coming to political power of the *bourgeoisie*. Persons who had their fortunes in industry and commerce rather than in land gradually wrested control of the state from the old landholding class and maintained themselves in power by the parliamentary system. In the course of the nineteenth century the very wealthy, no matter what the source of their income was, came together to form the capitalist class. The distance that separated capitalists from proletarians became ever greater, but the middle class, or lesser *bourgeoisie*, tended to fill that gap. Finally, however, the middle class itself began to be threatened; and now there seems to be a danger that it will disappear or become so weakened that it cannot perform its traditional function in society. Nazism and Fascism, the New Deal and the National Government in England seem to Professor Palm to furnish evidence that this condition has nearly come to pass.

Whether or not one agrees with the outline of this sketch of the history of the middle class, it can scarcely be maintained that Professor Palm has not traced a connected and living story of the *bourgeoisie*. In any work of synthesis that covers such a long time-span as this one, it is not difficult to discover errors of fact, but it is useless to insist upon them here. The essential thing to bear in mind is that here is a book which treats a vital subject in an interesting and scholarly manner.

SHEPARD B. CLOUGH

A Constitutional History of the United States. By ANDREW C. MCLAUGHLIN. New York and London, D. Appleton-Century Company, 1935.—viii, 833 pp. $4.00.

The present storm over the Constitution makes a critical survey and analysis of American constitutional history from its foundations to the present desirable. Justice Holmes envisaged the work of the legal historian as unfinished until he had shown how the economic and social forces of the times, the prevalent moral and political theories, the prejudices and biases of statesmen and judges have shaped the moral life and devolpment of his nation. "The true science of the law does not consist mainly in a theological working

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out of dogma or a logical development as in mathematics, or only in study of it as an anthropological document from the outside; an even more important part consists in the establishment of its postulates from within upon accurately measured social desires instead of tradition." Such a constitutional history has not yet been written for the United States, although Professor McLaughlin's statement of his aims gives us the right to judge his work by this standard.

The center of his interest is definitely in the earlier history of our Republic. As a result, one fouth of his volume is devoted to the period between 1750 and the adoption of the Constitution. The rest of the book, except for the last seventy-four pages, deals with the main events in our political history from Washington's first administration down to the election of 1876. The final three chapters consider the fate of the Fourteenth Amendment, the development of national authority, imperialism, trusts, interstate commerce, recent amendments and the powers of the presidency. The reason given for treating the period since 1876 so briefly is that it is difficult for the historian to be objective concerning events within his own lifetime. The author ends with a eulogy of the American constitutional system as one that has proved its worth through a century and a half of social change.

Professor McLaughlin has brought to his task great learning, thorough scholarship, a capacity for effective organization and a clear style. He deserves commendation for his compact and able presentation of many issues and theories in our history. Unfortunately, these merits are counterbalanced by several serious faults. The first is that the author has not worked out clearly the distinction between the Constitution in the textbooks and the Constitution in action, the Constitution formulated in the document of 1787 and its amendments and the living Constitution. The two do not coincide. Dicey in his noted *Law of the Constitution* defined constitutional law as all rules which directly or indirectly affect the distribution or the exercise of the sovereign power in the state. These may be embodied in statutes, judicial decisions, conventions regulating the conduct of those who exercise the sovereign power, as well as in the document called the Constitution. Horwill's *Usages of the American Constitution* and McBain's *Living Constitution* have developed this theme, but Professor McLaughlin has failed to take advantage of their work.

A second defect is the author's stress upon the political principles involved in historic debates to the exclusion of a detailed study of the

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economic and social interests involved. The first American Revolution, the Constitutional Convention of 1787, the struggle over the Alien and Sedition Acts, the nationalistic decisions of Marshall, and other episodes in our national history are considered in an economic void. An air of unreality hangs over the abstract discussion. The type of work that Beard did in his *Economic Interpretation of the Constitution* is ignored or minimized. The result is that many aspects of our history and government are not adequately explained. The student is denied a realistic understanding of judicial legislation, presidential powers, and political struggles masquerading under legalistic forms.

Justice Cardozo in his *The Nature of the Judicial Process,* Beveridge, Gustavus Myers, Swisher and other writers have thrown light upon the way judicial appointments have been made or the manner in which judges arrive at their decisions. Yet Professor McLauglin does not work out any theory about the relation between the interpretation given to the Constitution by the Supreme Court and the political parties that choose Supreme Court Justices. Nor does he attempt to show if any bias in favor of Big Business is revealed in the decisions of the Court. He errs in denying (p. 693) that Grant packed the court in 1870 (see POLITICAL SCIENCE QUARTERLY, September 1935, pp. 343-358). It also seems highly significant that no reference is made by the author in this volume to any works on the philosophy of law or economic theory. Morris R. Cohen's *Law and the Social Order*, John C. Gray's *Nature and Sources of the Law*, Justice Holmes's *Collected Legal Papers,* Veblen's *Theory of Business Enterprise*, and John R. Commons' *Legal Foundations of Capitalism* could have been used to illuminate the theoretical and sociological bases of our constitutional system.

Students desiring a more rounded and critical approach to the functioning of the Supreme Court and other institutions of our government will have to turn to the works of such realists as Beard, Boudin, Corwin, Frankfurter, T. R. Powell and J. Allen Smith. This is especially true for that portion of Professor McLaughlin's book dealing with the period since 1876. No one seeking to understand the conflict over the New Deal and the powers of the Supreme Court could get much aid from those concluding chapters. It would not be brought home to him that most controversies about the Constitution are, in reality, about questions that the Constitution by itself does not solve but which depend for their solution upon one's economic and social philosophy. Since the author stresses the legal-

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istic position, he helps to perpetuate the fiction that we have in the Supreme Court a government of law and not of men. The duty of the historian is not only to make the birth and growth of the society he is most interested in alive to his readers, but to help free men from that government of the living by the dead implied in any blind adherence to outworn tradition. That function Professor McLaughlin's history, despite certain virtues, does not perform.

SIDNEY RATNER

NEW YORK CITY

A History of Rome from 753 B. C. to A. D. 410. By CYRIL E. ROBINSON. New York, Thomas Y. Crowell Company, 1935. —xi, 456 pp. $3.50.

Having explored the *History of the Roman Republic* for young English students, Cyril E. Robinson (a master of Winchester College, best known for his *England: A History of British Progress*) has trained an historical telescope of lower power upon a wider field and has written an eminently readable, conventional narrative of Roman history from the founding of Rome to the sack of Alaric—for the same English students. The strength of this survey lies in the colorfulness of Robinson's style, in his keen sense of the dramatic in history, in his incisive thumbnail sketches of leading personalities, and in the tastefully chosen illustrations (chosen, however, more with a view to delight the eye than to instruct).

But history is not primarily a branch of literature. Not that Robinson has not kept abreast of the more recent research in Roman history. He has made little attempt, however, to break away from the traditional and conventional. For what could be more conventional than his periodization, 753 B.C. to A.D. 410? And what more traditional than his emphasis upon military and political history? However true it may be that wars and politics loom large in Roman history, no genuine insight into the significant historical issues is possible unless social, economic, intellectual, artistic, literary and religious developments are made the core of the study of history. These aspects of Roman civilization are not neglected by Robinson, but his discussions of them serve only as breathing spells between the narratives of military and political events. It is perhaps fortunate that he does not elaborate his understanding of class relations, in which aristocrats ought to be refined and cultured folk (p. 16); wealthy Romans are "better-class Romans" (p. 38); "decent folk,

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both among the senatorial nobility and the equestrian *bourgeoisie*", are arrayed against the "mob and its demagogic leaders" (p. 174); Illyrians in the third century A.D. are "rough Illyrian peasants" (p. 389) and "half-civilized peasants from the Illyrian hills" (p. 391); but the competent Claudius Gothicus is "the stout-hearted son of an Illyrian farmer" (p. 399).

Robinson's treatment of the republican period of Roman history (a sweating down to half its length of his *History of the Roman Republic*) is far more successful than his treatment of the Empire. He covers swiftly the period to the third century B.C., when Rome became a world power and entered upon its mission as carrier of the Greek tradition. But throughout the book he repeats the traditional slander of the degenerating influence of Hellenism and the East upon Rome and the West. A disproportionate amount of space is allotted to the hundred years between the Gracchi and the end of the Republic. The early part of the Empire is well treated, but the narrative descends to chatty gossip about the emperors in that period which has not yet been explored by the *Cambridge Ancient History*. Especially inadequate is the discussion of the causes of the decay of the Empire.

The book is supplemented by chronological tables of political, military, constitutional, judicial and literary developments, which would be more useful if more lucidly arranged. Bibliographical material and a good index are lacking.

MEYER REINHOLD

BROOKLYN COLLEGE

American Diplomacy: Policies and Practice. By BENJAMIN H. WILLIAMS. New York and London, McGraw-Hill Book Company, Inc., 1936.—xii, 517 pp. $4.00.

Whether the study of American diplomacy is to be regarded as lying within the sphere of the historian or within that of the political scientist is largely a matter of administrative convenience in teaching and research. Political scientists in increasing numbers have taken over the field in recent years. Many of them have regretted that practically all available general texts in the field have been the work of historians who have concerned themselves much more with past chronology than with current issues and with the legal and administrative aspects of American foreign policy.

This circumstance should cause Professor Williams' work to be greeted with three rousing cheers—not only by teachers and students

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of political science but by all citizens interested in diplomacy not as something remote in time and space but as something in the here and now, vitally affecting many aspects of American life. The book is an admirably organized and highly readable survey of the recent and contemporary diplomatic problems facing the United States. Part I deals with "Regional Policies": toward Europe (neutrality, non-coöperation, non-intervention), toward the Americas (Monroe Doctrine, Caribbean policy, Pan-Americanism) and toward Asia (the open door and the problem of the Philippines). Part II, "Economic Diplomacy", reviews in three excellent chapters the promotion and protection of exports of goods and capital. Part III, "Policies of Peace and World Organization", deals with American relations with the League and the Permanent Court, the Kellogg Pact and disarmament efforts. Part IV, "Conduct and Machinery", describes in four chapters the constitutional, statutory and administrative controls of American foreign relations.

The volume is a model of competent and impartial scholarship. Only two general criticisms seem warranted: a greater effort might have been made to overcome the effect of fragmentation, inherent in a topical treatment, by emphasizing historical continuity and regional interrelationships and by discussing the general evolution of American policy since the Spanish-American War in a more systematic fashion. A greater effort might have been made to present alternative courses of action in realistic terms by dealing more comprehensively and controversially with such topics as the "Good Neighbor" policy, the impending Japanese-American naval race and the broader implications of the neutrality legislation. But these are scarcely defects. A text should, above all, present factual data in an attractive and intelligent fashion. Professor Williams has succeeded brilliantly in this purpose.

The political scientist, like the historian, necessarily interprets his data, even if he is unconscious of the fact, by the mere process of selection and emphasis. Professor Williams has for the most part relegated his "*Weltanschauung*" to brief introductory and concluding chapters. Here he makes an effort to evaluate the direction of American foreign policy in terms of "the direction of the world currents in which our destiny is set." He has been impressed by Oswald Spengler and Arnold J. Toynbee and Charles A. Beard. He has also been impressed with the growing economic interdependence of the world, with the progressive annihilation of space and with the amazing economic expansion of the United States over the

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globe. He concludes that isolationism, autarchy and localism are improbable developments because of the "outward pressure" of favorable trade balances and the continued drive for foreign markets. This pressure must lead, he believes, either toward a new internationalism or toward a recrudescence of imperialism. Which alternative will be chosen he leaves "to the soothsayers to foretell and to the future to disclose."

Few will quarrel with this general orientation. The philosophically-minded will only regret that the author did not develop it more incisively and elaborately and relate it more specifically to all the situations dealt with in the body of the text itself. And some will regret that the material has not been organized and interpreted in terms of social psychology, cultural lag, power politics and the grand strategy of *Realpolitik*. The record is here, however, and each reader may draw from it such general conclusions as he prefers.

FREDERICK L. SCHUMAN

WILLIAMS COLLEGE

Rulers of America. By ANNA ROCHESTER. New York, International Publishers, 1936.—367 pp. $3.50.

Miss Rochester has divided her work into three parts of which the first is biographical, the second an exposition of financial control in selected industries and the third a description of a present crisis in capitalism.

As her "Rulers" the author specifies the families of Morgan, Rockefeller and the Mellons. In respect of each of these "Houses" she traces the rise of the fortunes that sustain the power attained by the bearers of the family names. Upon this warp Miss Rochester weaves the pattern of the financial oligarchy that these three fortunes have created. She sets forth how the members of the oligarchy coöperate, how they struggle with each other for supremacy, and how at times they have set up "neutral zones" that are only temporarily quiet spots in the battle for dominance.

The possession of great fortunes is shown to lead inevitably to the control of investment and commercial banks and thereby to the control of vast funds that are not personally owned. Since industry must come to the banks, the latter seize opportunities to put their henchmen in seats of authority within industry. This ambassadorship has the double advantage of enabling the banks to dictate to industry and to gain accurate advance information as to what moves

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industry will make—a source of further financial profit to the banks. Along with the grasp on industry the money oligarchy reaches for and gets political rule. The laws, together with their enforcement officers, become the tools of the oligarchy.

In the second part of her book Miss Rochester gives point to her main thesis by analyses of the influence of finance capitalism in seven major industries; these are: oil, copper, electricity, chemicals, aviation, steel and railroads. She turns from these entrenchments of finance capital to the zones where finance capital still is at war; namely, agriculture and small scale retail or wholesale businesses. Since the goal of finance capital is monopoly and because competition still exists among farmers and traders, these, in the opinion of finance capital, must be subjugated.

As befits crisis, the third part of the volume which deals with this topic has only three chapters. One indicates that when capitalism cannot find sufficiently profitable employment at home it spills into economically backward foreign areas and thus becomes imperialism. The imperialisms of economically advanced nations clash with each other and end in war. A second chapter shows finance capital scurrying for protective measures both in wars and cyclical depressions. The third and final chapter has the significant title, "Will the Rulers Maintain Their Power?". Miss Rochester believes that for a while our American rulers can maintain their position; but she thinks that present trends foreshadow a revolutionary crisis at some future date.

Obviously this is a radical treatise; the author admits her fealty to Marx and Lenin. Therefore the dispassionate treatment of Gustavus Myers' *History of the Great American Fortunes* or Berle and Means's *Modern Corporation and Private Property* is not characteristic of Miss Rochester's work. This is not to say that she has not tried to keep her tone to the level of her facts. Although her fabric is quietly woven with prosaic statistics, its pattern turns out to be Leninistic and its color, red. This makes her book more vibrant than its predecessors.

Granting Miss Rochester's special pleading, it must be admitted that her book is so carefully documented as to prove painstaking research on her part, and it is difficult not to accept the conclusion toward which she has marshaled her data.

MALCOLM KEIR

DARTMOUTH COLLEGE

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Colonial Hispanic America. Volume IV of *Studies in Hispanic American Affairs.* Edited by A. CURTIS WILGUS. Washington, The George Washington University Press, 1936.—ix, 690 pp. Bibliographies, appendices and maps. $3.00.

This volume is a compilation of the lectures given to the fourth Seminar Conference on Hispanic American Affairs, held at The George Washington University during the summer of 1935. It is not a book, but a series of disjointed treatises thrown together without much regard for the principle of proportion. For example, in chapter four the disproportion permits twenty pages to be devoted to exposition and thirty pages to bibliography. The same fault is apparent when several pages are given to the colonial institutions of Brazil and not a line to the conquest and early settlement of the great Portuguese colony. The quality of the treatises varies as widely as the quantity.

The contents of chapter one hardly justify the title—"The Significance of Hispanic American Colonization". Chapters two and three give a general geographical background of the colonial period in the Caribbean and in South America, but the author's attempt to give a geographical explanation to historical facts seems far-fetched at times. The body of chapter four is too brief to take one far into "The Native Background in Latin American History", though the thirty pages of bibliography should satisfy the most industrious student. The psycho-philosophical treatment of "The European Background" (chapter five) represents an attempt to discover principles underlying Spanish institutions and methods, but in reality it does little more than add variety to the volume. Chapter six is a bare outline of the story of Spanish conquest during the sixteenth century, followed by a still more inadequate summary of Spain's achievement in the colonial epoch. The chapter is silent on Portuguese efforts in Brazil. In the next chapter Dr. Lillian E. Fisher lists, with inadequate comment, the agencies of government which Portugal and Spain evolved for controlling their New World possessions.

Dr. J. Lloyd Mecham's discussion of "The Church in Colonial Spanish America" is a worthy contribution. The treatment of the origins and nature of the *Real Patranato de las Indias* is followed by a survey of the organization and activities of the Catholic Church in the Indies. Unfortunately, space did not permit him to give due consideration to the Church in the realm of education. The next chapter, "Colonial Society", treats the population constituents in

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the New World and notes the fact that these groups had occupations and amusements. Disappointment awaits the reader of these few pages. Nor does he get surcease by a perusal of the following forty-five pages dealing with "The Transmission and Diffusion of Culture in the Spanish American Colonies". But he strikes a comparative oasis in the next essay by Dr. Roland Dennis Hussey, who discusses "Colonial Economic Life" in both Spanish and Portuguese America.

Chapters twelve, thirteen and fourteen come under the title "Colonial International Relations" and cover more than sixty pages. The three topics—"Mare Clausum and the Theory of Effective Occupation", "Oglethorpe and the Theory of Effective Occupation", and "Final Triumph of Effective Occupation and the Freedom of Navigation"—have far less unity than the titles would suggest and are about as readable as a doctoral dissertation, of which they may have been a part at one time. If the author had omitted some of the meticulous details, he might have found space to carry his story beyond the middle of the eighteenth century and to include the significant rivalries in the regions of La Plata and western North America.

Covering more than a hundred pages, the last five chapters of the work deal with the movements for independence in Spanish and Portuguese America. Like other portions of the volume, this section offers very little new material. In fact, the chapter on Brazilian independence is less satisfactory than accounts in English found elsewhere.

The following titles appear in nine appendices: "The Catholic Church as an Economic Factor in Colonial Spanish America" by Almon R. Wright; "The Early Franciscans in Florida and their Relation to the Colonization of the Spaniards" by Maynard Geiger; "Colonial Brazil as an Element in the Early Diplomatic Negotiations between the United States and Portugal" by Raul d'Eça; "Spanish Royalists in the United States, 1809-1821" by Philip Coolidge Brooks. Finally, there are five appendices by the editor, A. Curtis Wilgus, dealing with the histories and historians of the centuries from the sixteenth to the twentieth inclusive.

The foregoing analysis suggests that if this volume can be justified at all, it is because it brings within the confines of a single cover summaries hitherto widely scattered. The format is generally good, but many pages are marred by poor editorial work and careless proofreading.

LAWRENCE F. HILL

OHIO STATE UNIVERSITY

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Exchange Depreciation. By S. E. HARRIS. Cambridge, Harvard University Press, 1936.—xxix, 516 pp. $5.00.

In the first part of his study of exchange depreciation Professor Harris gives an excellent summary of the theoretical issues involved. The second part consists of an analysis of the relationship between depreciation, on the one hand, and trade, production and prices, on the other. The eight chapters on the "American Episode—1933-1935", which constitute Part III, cover a varied array of topics, including exchange depreciation, monetary policy and gold buying, public expenditures, agricultural policies, the N. R. A., the public works program and the Banking Act of 1933. Part IV deals with the British situation from 1931 to 1935. The chapter on easy money is followed by a discussion of the British Exchange Equalization Fund, and by a chapter titled "British Trade under a Depreciated Standard".

The general conclusion indicated by the earlier part of the book is that exchange depreciation, while not the sole cause, was the main propulsive force toward recovery. Professor Harris says that "the evidence points to large competitive gains, even after four years of depreciation, for countries that gave up the gold standard and remained, in the degree of depreciation, ahead of the average run of countries" (p. 92), and that "exchange depreciation also seems to have improved the competitive position of countries off gold because with depreciation the rise in real wages has been effectively stopped" (p. 170). He also states, after analyzing the trade data, that "the most important general conclusion is that following depreciation, countries off gold improve their trade position" (p. 148), and that "although the adjustment of prices and costs to exchange depreciation is not great, it has, nevertheless, been demonstrated that prices have risen most where exchange depreciation has been greatest" (p. 169). His final dictum is that the "evidence is overwhelming that countries off gold captured a larger part of the world's production" (p. 179). The author hedges, however, when he states that the "effects of exchange depreciation are not easily to be distinguished from the various supplementary measures that have been introduced" (p. 481), and that "exchange depreciation can be effective only if supplemented by the proper domestic policies" (p. 483).

Generally, though, Professor Harris looks upon exchange depreciation as beneficial. But, despite repeated statements and the many "studies" (tables) throughout the book, which purport to demonstrate the effectiveness of depreciation as a mainspring of recovery,

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this reviewer can only conclude that exchange depreciation was one of numerous factors at work. Professor Harris has not sufficiently stressed other factors.

Repetition in the volume serves to burden the reader rather than to clarify the author's thesis. For example, the great bargaining power of Britain, which results from the size of her market, is stressed so often that one wonders whether the rest of the world did any trading at all except with and through Great Britain. Although Professor Harris reiterates his theory that improved conditions within a nation, resulting from currency depreciation, give rise to a larger national income and thus to larger foreign trade, he fails to convince the reviewer. How can two 50-cent dollars purchase more abroad than one 100-cent dollar?

The use of annual figures for so short a period (1931-1935) to "prove" the effectiveness of some one economic factor is likewise open to question. The movements within any one year are fully as important as, and sometimes more significant than, annual changes. Nor does it seem possible that annual figures for five years can indicate even roughly the effects of exchange depreciation in any one country since 1930. The uncertainty is particularly great since depreciation in most countries was concomitant with, or was closely followed by, competitive depreciation in other countries, and by such other defense measures as tariff increases to offset currency depreciation, the imposition of quotas, embargoes, anti-dumping laws, sumptuary regulations, extreme sanitary regulations, exchange restrictions, blocked currencies, bilateral trade treaties, clearing agreements, rearmament policies, and the like. All of these measures have tended to obscure the effects of exchange depreciation taken alone.

Parts of the book are marred by typographical errors. One amusing example appears on page 197, where U. S. Treasury expenditures for R. F. C. direct loans and expenditures appear as "R. F. C.—Direct Losses and Expenditures". Of course, Professor Harris may have been trying to be prophetic. On page 363 appears the statement, "Had export prices risen proportionately to the drop of the dollar in terms of gold, they would have risen 67 per cent". I wonder whether that should not be 69 per cent, as the weight of the gold dollar was cut by 40.94 per cent, and not by 40 per cent. Also, on page 240, the reference to $1.20 an ounce as one of the two alternatives sought in the Silver Purchase Act of 1934 should, I believe, be $1.29+, the monetary value of silver referred to in the Act. Reference to a nonexistent Gold Standard Reserve Act, on pages 239 and 251, when the Gold Reserve Act of 1934 is meant, is confusing.

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It would have been helpful had Professor Harris compiled a bibliography of the various materials to which reference was made. This would have been more useful than his list of statistical sources, which are well known. Even some of the statistical sources are secondary and should not have been resorted to when, in most cases, the primary sources are so readily available. The use of the Federal Reserve Bulletin instead of the actual Treasury Statements, for data on government expenditures, was especially unfortunate, since the footnotes to the tables presented in the Bulletin are admittedly not clear and have consequently misled the author.

The index, like the rest of the book, would have been more readable and accurate if it had undergone careful editing before publication.

Professor Harris' book does take a step in the right direction, in that it attempts to test existing theory against the available data. Courage to take even that first step in so controversial a field is to be commended. But until far more extensive and precise empirical data become available for analysis, any general proposition as to the effects of exchange depreciation must rest primarily upon the deduction of theory, with only uncertain support from the direct but confused evidence of history and statistics.

JAMES D. PARIS

PELHAM, NEW YORK

Public Personnel Administration. By WILLIAM E. MOSHER and J. DONALD KINGSLEY. New York and London, Harper & Brothers, 1936.—xiii, 588 pp. $5.00.

This volume presents for the first time a full-length portrait of the existing system of personnel administration in the United States. The authors have chosen wisely to consider their subject as a common governmental activity running through the federal, state, county and municipal governments, rather than as an unrelated topic recurring at each level of administration. College teaching in this field still offers many courses in state, federal or municipal administration, each of which deals necessarily with personnel management. In this book the subject is treated as a unit in its various manifestations which, after all, tend to form a common pattern, due allowance being made for differences in magnitude.

After three preliminary chapters, the authors present a thoroughgoing consideration of the personnel agency, raising the important question as to whether the civil service commission as an adminis-

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trative form longer deserves public support. Their conclusion on this point is definitely against the traditional civil service commission, as an independent and external agency with a relatively negative outlook, and in favor of an integrated personnel agency with a strong positive program.

There follow in order six chapters on recruitment and certification problems, six chapters on training and terms of employment, including the handling of discipline, four chapters on compensation and other employment incentives, including the unsolved problem of service ratings, and finally five chapters on employee relations, including unionism in the public service and working conditions, together with a final chapter of general conclusions.

The authors have not only combed the available literature but have carried on a considerable amount of research in order to build up a body of factual material which is not equaled in any other volume in the field. This is less a volume dealing with theory than it is a survey and appraisal of current practice. The authors indeed give warning in the foreword that their basic philosophy of personnel administration is to be credited to Henry C. Metcalf and Ordway Tead.

What can be said of the system of personnel administration which is so admirably illuminated in this timely book? The widest variety of achievement and of standards of performance stands out at every point. Many progressive steps in personnel administration are given due notice, for example, the admirable classification technique of the United States Civil Service Commission and the constructive work of its Research Division, the service rating system devised by Mr. J. W. Probst of St. Paul, and the sliding-scale salary adjustments developed in that city, the contractual services which have recently been authorized in personnel administration in California and Michigan (more might have been said about this significant development), and the emerging training facilities in Washington. On the other hand, there are notable deficiencies in present personnel practice; placement techniques are so conspicuous by their absence in the public personnel field that "placement" does not even enter in the index of the volume; the art of supervision has been so little studied that the authors were unable to mention it in their well-balanced survey; long-term programs for developing administrative personnel are hardly to be found in the length and breadth of the country; interchange of personnel for training purposes remains an ideal still beyond the horizon of practical operation. More than that we sense an unfortunate but progressive decay of some aspects

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of personnel work in smaller jurisdictions, especially in the field of classification. And so far as the records of civil service commissions are concerned, the gaps in the tabular presentations by the authors point to standards extraordinarily low. Back of these hard facts lie the pitifully inadequate funds for the performance of personnel operations.

Much remains to be done to bring current practice up to the standards which the stronger commissions have already established. Much remains to be done, also, in basic investigation and research to permit the progressive improvement of practice and procedure. This volume itself lends strong aid to those who are working toward these ends. The reconstituted and reënergized Civil Service Assembly of the United States and Canada is a fitting instrument to carry forward the work which Professor Mosher and Professor Kingsley have so amply defined.

LEONARD D. WHITE

UNIVERSITY OF CHICAGO

Cooperative Consumer Credit, with Special Reference to Credit Unions. By M. R. NEIFELD. New York and London, Harper & Brothers, 1936.—x, 223 pp. $2.50.

Credit union literature in this country has been largely of the promotional type such as the publications of the Credit Union National Extension Bureau now the Credit Union National Association. Dr. Neifeld has carefully examined this promotional literature and such statistical information as is available, conducted research and carried on interviews with officials of credit unions, banking department supervisors and others.

He briefly traces the history and major purposes of credit unions in the United States, Canada and abroad. In this country these organizations as a rule confine themselves to the promotion of thrift and the granting of loans to consumers, whereas in Europe they tend to take on broader functions. While Europe saw the beginnings of credit unions in the middle of the last century, they were not established in this country until 1909 when Massachusetts passed the first credit union law. The need for better consumer credit also brought about the beginning of the Morris Plan in 1910 and that of personal finance companies in 1911. Although forty-one states and the District of Columbia passed credit union laws, their growth was relatively slow in spite of active promotional work. In 1934, the Federal Credit Union Act was passed. Under this act credit

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unions were given a great impetus in states that either had no enabling laws or had too many obstacles to the formation of unions.

Dr. Neifeld devotes separate chapters to rural, parish, postal, industrial, federal and "open" credit unions. He also traces their growth in Massachusetts and Wisconsin where conditions have been especially favorable. In subsequent chapters he examines the assertions made by credit union enthusiasts concerning the possibilities of the movement and the infallibility of the organizations. His conclusions are that credit unions have not displaced nor are they likely to displace other lending institutions; that they are not infallible; that they present many operating problems; that they frequently depend for existence on a few people; and that they are from an operating standpoint semi-charitable rather than coöperative institutions.

A short but exceedingly instructive chapter is the one entitled "The Record". The author here points out that credit unions furnish less than two per cent of the annual volume of consumer credit, and then remarks that "the place for credit unions appears to be somewhat wider in scope than is now occupied; but at the same time it is more circumscribed than is claimed for it" (p. 162).

That the author is not a destructive critic of the credit union movement is indicated by his last chapter, entitled "A 27-Point Program for Credit Unions". Some of the points are new, others may be found in other literature on the subject. This book should be of value to teachers giving courses in finance as well as to those interested in coöperation or consumer economics. Dr. Neifeld has not only presented a factual and historical study of a type of consumer credit that has possibilities of growth but has also carefully appraised its strength and weakness.

ARTHUR E. ALBRECHT

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Wege und Wandlungen des Nationalbewusstseins. By EUGEN LEMBERG. Münster i. W., Aschendorffsche Verlagsbuchhandlung, 1934.—vii, 246 pp.

Nationalismus und Ethik. By WALTHER PEMBAUR. Vienna and Leipzig, Wilhelm Braumüller, 1935.—viii, 180 pp. Rm. 5.

Dr. Eugen Lemberg, a German of Czechoslovakia and author of a work on the early period of Bohemian nationalism, chose the Netherlands and Bohemia as two test cases for the study of the development of nationalism. He selected these countries because both have been and still are the scenes of struggles between two national traditions.

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In the case of the Netherlands it is between the Germanic and Romanic traditions; in the case of Bohemia it is between the Germanic and the Slavic. Unfortunately, however, Lemberg's study lacks a clear conception of the basic terms and ideas. In his ardent desire to show that the universal Christian tradition of the Middle Ages was closely akin to modern nationalism, he introduces modern conceptions into medieval history which are obviously forced. His section on Bohemia, while bringing together interesting information regarding national ideology from Monte-Blanche to Masaryk, consists largely of a patchwork of authorities, quotations and subject headings which fails to bring out a real picture of the complicated problem of national conflict in Czechoslovakia.

Dr. Walther Pembaur, an Austro-German, undertakes the task of providing an ethical basis for contemporary nationalism. He essays to harmonize nationalism with universalism and the attachment to the individual nation with the ideal of humanity. He maintains the inherently natural character of nationalism and finds its roots in primitive society. One leaves this book, however, with a keen realization of the utter futility and real danger of taking vague phrases and abstract concepts too seriously. The work is replete with glowing references to humanity, freedom, tolerance and equality. But the author gives himself away when he touches upon two concrete problems of nationalism, one concerning his own German nationalism, the other dealing with the Jewish problem. All his references to tolerance, freedom and humanity are completely forgotten when he refers to the Jews. To him the Jews are the archenemy of the world, with their control of economic and cultural life and through their international connections. They must be boycotted in economic affairs and they must be removed for all time from any influence in the field of culture (pp. 142-44). Similarly his references to chauvinism evaporate completely when he refers to German nationalism. The Germans alone of European nations, he avers, recognized their national destiny in the preservation of honor and freedom rather than in exercising power over others (p. 159). But the Germans have a special mission for all other nations. Their culture is the closest to a universal culture and therefore it must become the culture of mankind (p. 178).

Such works indicate clearly how great is the need for calm, dispassionate and historically objective study of the most volatile subject of our time, the problem of nationalism.

KOPPEL S. PINSON

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BOOK NOTES

The theory of free competition has been subjected in the last few years to a very thorough reëxamination, and a considerable body of literature has grown up on the subject. Dr. C. J. Ratzlaff, however, in his *The Theory of Free Competition* (Philadelphia, University of Pennsylvania Press; London, Humphrey Milford, Oxford University Press, 1936; xix, 341 pp. $3.00), makes no reference to this literature nor does he appear to have made any use of it. He has gone back mostly to the English economists from Smith to Marshall and to the writings of the English socialists. His principal thesis is that "the essence of economic competition is mobility of the factors of production" because such mobility maximizes net social satisfactions. This simple conclusion is arrived at by including under mobility scarcity of the means of production, the profit motive, complete knowledge and complete divisibility of the factors of production, as well as the "neutralizing or elimination of those social institutions which retard the unrestricted movement of the agents of production." Thus free competition is not synonymous with laissez faire, which point is made by the author at considerable length. Dr. Ratzlaff's ultimate criterion is the attainment of maximum net social satisfactions but he ignores the bewildering difficulties of giving realistic content to this grandiose phrase. He says merely that competition requires "standard setting" by the state and appears to mean the setting of minimum standards of living. He is very critical of the British socialists partly because of their belief that increasing state activity indicated a diminishing reliance upon free competition. He accuses them of being misled by "their own play of words" and explains that such state action is "associative competition", forgetful, apparently, of the possibility that they might accuse him of playing with words when he constructs an arbitrary and unconventional definition of competition. He accuses the socialists of error also in thinking that the small producer was disappearing; by defining a stockholder as a producer he seeks to prove his charge. In fact he claims that competition in general is increasing, although it is not precisely clear when and where. He finds one of the most remarkable economic phenomena in the increasing degree in which the proportions of the factors of production can be varied

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within both plants and industries. Even more remarkable are his reasons. There is a marked growth of knowledge "both present and future" of returns in different places and products. He appears not to have experienced the almost maternal ferocity with which business men protect information concerning their costs and profits. This close adjustment of capital within firms and industries he also attributes to the development of stock of small denominations. The consequences of increases in the size of optimum firms in this connection is altogether ignored. This volume throws little new light upon the subject of its investigation. The analysis of theories is often unnecessarily involved and the references to the outside world very unreal.—ARTHUR ROBERT BURNS.

In *World Finance, 1914-1935* (New York, The Macmillan Co., 1935; xvi, 382 pp. $3.00) Dr. Paul Einzig expresses his belief that "the past two decades constitute undoubtedly the most interesting period in modern financial history." Our financial system, he states, is more involved than that of any previous generation. "The experience of recent years has thrown into the melting pot much of what was considered before the war as being above question" (p. 5). The author points out that the nineteenth century struggled with the problem of production, whereas the most difficult problems today are those of distribution, and the problems of distribution are largely financial. In the past twenty years the author finds four distinct trends: inflation, stabilization, deflation and reflation. It is his belief that "even the most skilful planned and executed monetary policy would have been unable to produce satisfactory results amidst the conditions prevailing since 1914." After describing these four trends in detail the author seems to come to the conclusion that the servants of society endowed with the tasks of managing monetary economics have not had the skill, intelligence, power or machinery to cope with the task during the past twenty years. The real mistake was when countries embarked on an inflationary policy in 1914 and in 1920 adopted a policy ignoring the consequences of their previous inflationary policies. In the case of the United States, the need for permanently depreciating the dollar was not great in 1920, according to the author, but in England the debt burden made the struggle to restore the pre-war gold value of the pound insurmountable. "Those who maintain that the experience of the period between 1914 and 1926 has taught us a lesson to oppose to the utmost even the slightest departure from rigid orthodoxy have completely misread the lessons of the financial history of the war and of the post-war period. The financial

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experience of the years of extreme inflation . . . constitutes a warning against uncontrolled inflation whether moderate or extreme. It constitutes a warning against inflation undertaken for essentially unproductive purposes. Over and above everything, it constitutes a warning against inflation of every kind undertaken under a system of liberal capitalism" (p. 363). Dr. Einzig thinks stabilization failed because it did not allow for fictitious wealth, discrepancies between price levels, inadequate gold supply, and like defects. He indicates that economic planning might have made it work. Deflation is necessary in liberal capitalism because credit restriction is the only effective weapon governments have for checking booms and over-expansion. Deflation, however, could be avoided by economic planning. The author believes in economic planning and complete dictatorship of the monetary authorities. There is much to be said for this thesis, but little probability of such a system under our form of government. The British sterling bloc has in it much of what Dr. Einzig would recommend.—IVAN WRIGHT, University of Illinois.

The actual scope of the subject matter of *The Economics of the Iron and Steel Industry*, by C. R. Daugherty, M. G. de Chazeau and S. S. Stratton (published for the Bureau of Research, University of Pittsburgh, by McGraw-Hill Book Co., New York and London, 1937; 2 vols. 1188 pp. $12.00), is much narrower than its broad title would indicate, since it is limited to the United States and treats here only of the steel industry during the brief period it was under the N.R.A. codes. In order to treat that period adequately, however, it was necessary to consider it in relation to what had gone before, consequently the broad title has some justification. The study of which this is the outcome was suggested by the Brookings Institution and was financed by the Falk Foundation. It was originally planned as a study that would have influence upon public opinion toward the code and was begun in haste, but the Supreme Court decision, in May 1935, invalidating all codes made it possible to complete the investigation in more leisurely fashion as a study of one phase of the transition from a stage of quick growth and rapidly expanding markets into a maturity of slow growth and intensified competition for markets. As such it is of great interest. Part I (305 pages) sketches the background, dealing with the production and distribution patterns in the industry, pre-code labor conditions, and an analysis of the code, its general administration and its labor provisions. Part II takes up production and pricing problems under the code and in some 400 pages discusses production, capacity, and the utilization

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of capacity in the industry, cost elements, earnings and financial ratios, trade practices, and, after review of the historical development of the basing-point system, explains at great length the pricing of iron and steel under the code. Part III deals with labor conditions, covering wage rates, and earnings, hours of labor, employment, unemployment, working and living conditions, and almost 150 pages are devoted to the discussion of group labor relations and collective bargaining. The fourth part consists of a 70-page summary of what has gone before, and a 12-page epilogue which is described in a footnote as an interpretative synthesis of the results of a work divided among three authors. The ownership of iron-ore reserves in Minnesota is covered in a 3-page appendix and there is a 5-page bibliography. There is an adequate index. — THOMAS T. READ, Columbia University.

A half-century of history of the gold-mining regions of South Africa is the theme of Owen Letcher's *The Gold Mines of South Africa* (published by the author, Johannesburg, 1936; xiii, 580 pp., maps. $8.00), but, in addition to the technological material around which a book by a mining engineer, who is also a journalist, would naturally revolve, it contains many economic and sociological data, chapters on native labor, miners' phthisis, safeguarding of public health, government rents and royalties, taxation, transportation, and a chapter on what the mines buy. There are twenty pages of statistics and eleven pages of selected bibliography. It is likely to take a place beside Gardner Williams' monograph on diamond mining as one of the two standard works on mineral enterprise in South Africa. —THOMAS T. READ, Columbia University.

Professor Heinrich Ritter von Srbik, widely known for his exhaustive study of Metternich, is not only a distinguished historian but also one of the leading Austrian intellectuals working for an agreement between Nazi Germany and Austria. His latest work on German unity—*Deutsche Einheit: Idee und Wirklichkeit vom Heiligen Reich bis Königgrätz* (Munich, F. Bruckmann AG., 1935; 2 vols. 456; 424 pp. RM. 27.-)—traces Austro-Prussian relations from the days of the Holy Roman Empire, through the revolutionary era and the age of '48 to the peace of Villafranca (a third volume, carrying the story down to Königgrätz, is in preparation). Srbik writes a history which is "not Prussian nor Austrian, not *grossdeutsch* nor *kleindeutsch*, not determined solely by the idea of *Macht*, or of *Raum*, or the universal or national idea." His standpoint, he says, is "*gesamtdeutsch*". As such he is critical, of course,

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of the work of Bismarck and the second Reich. He cannot join with the German historians in looking upon Bismarck as the "unique Messiah of the entire German people". Srbik feels that the destiny of the German people is bound up with some form of central-European federation. The most profound problem in the history of Germany is the "coexistence, succession and interaction of the universal, the central-European and the national-state ideas." It is in this light that he surveys Austro-Prussian relations, showing more sympathy with the policy of Schwarzenberg than is usually found in works on German history. Despite the contemporary political motivation of this work it is a book of the highest scholarly attainments. There are certain obvious exaggerations: exaggerations with respect to German national feeling in the seventeenth century, exaggerations of German national feeling in Austria during the eighteenth century and a tendency to minimize, wherever possible, Austro-Prussian antagonisms. Exaggerated also is the emphasis on the German character of Prince Eugene of Savoy. Otherwise, however, the book is a masterpiece of historical synthesis combined with a manner of presentation which makes it almost as readable as Treitschke. It should be noted, perhaps, that unlike many of his German colleagues Srbik has *not* adopted the practice of omitting references to non-Aryan scholars.—KOPPEL S. PINSON, Queens College.

Nicholas P. Vlachos' *Hellas and Hellenism* (Boston, Ginn and Co., 1936; ix, 428 pp. $3.00) is a competent but undistinguished treatment of Greece from the beginnings to the loss of political independence. The author holds that Hellenic civilization in all its phases is a product of the city-state (*polis*). But when he examines religion, morality, education, poetry and prose, art and architecture, science and philosophy he assigns at least equal importance to the physical environment and to racial love of beauty and reason. The central thesis itself — the relation between the individual citizen and his *polis*—is not presented with complete clarity. Sometimes the interests of the state are conceived to be different from those of the citizens who compose it: policy aims at "not individual comfort and individual security but the well-being of the group" (pp. 141-2); "the state does not exist for man, but man belongs to the state" (p. 84). At other times we are told that "the Greek citizen . . . recognized that his own interests were best served by promoting the common weal" (pp. 124-5). There are lesser difficulties. "Of representative democracy the Greeks had no notion" (p. 75); "the Athenians practised representative government in their council" (p. 89). Among the causes

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that "contributed to aggravate the burdens of the poor" in Solon's time is included "the introduction of the olive and the vine, withdrawing an increasing extent of land from the raising of foodstuffs" (pp. 82-3); by one of Solon's beneficial laws "the exportation of grain was forbidden, which served to encourage the raising of other crops (olive and grape), better adapted to Attic soil and likely to furnish material for export" (p. 85). Incidentally, "introduction" is hardly correct; olive and vine were both known to Homeric economy, in which Athens played a part (p. 47). Ostracism required not a majority of 6,000 votes (p. 90) but either a plurality (Plutarch) or a minimum of 6,000 votes (Philochorus). By a slip Argolis and Laconia are assigned to the western Peloponnesus (p. 62). The absence of such works as Glotz's *Aegean Civilization* and Andreades' *Greek Public Finance* from the bibliographies is regrettable.—EDWARD ROSEN, College of the City of New York.

This new collection of source material—*English Constitutional Documents, 1307-1485* (Cambridge, at the University Press; New York, The Macmillan Co., 1935; xxv, 430 pp. $3.50) by Eleanor C. Lodge and Gladys A. Thornton—fills a gap that has been increasingly evident as our knowledge of the late Middle Ages has steadily expanded. We know now that great constitutional changes, not a mere elaboration of the detail of institutions, occurred in the two centuries following the death of Edward I. Then only did parliament assume its permanent form and become a regular part of the organization of the state; then extraordinary taxation became a necessary part of the revenue, while profound alterations took place in judicial and administrative branches. With this volume such developments can be freely explored with students. The organization of Tanner's *Documents* rather than that of Stubbs's *Select Charters* has been followed. The selections are arranged topically. Part I, The Central Government, has sections dealing with the crown, the council, the household, parliament, the chancery, seals, the exchequer and justice; Part II deals with the church; Part III covers local government, with sections on the justices of the peace, the sheriffs, the coroners, the escheators, the forests—all as branches of the central government—seignorial jurisdiction (13 pages), and a substantial section on the towns. Each division is preceded by an excellent historical survey and a useful bibliography "for further study". The extracts are given in the original Latin, Anglo-French (this of doubtful advisability), and English, and so illustrate the rise of new official languages beside Latin. They are taken chiefly from printed

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sources, often not easily available, comprising official documents like the statute roll and the rolls of parliament, the acts of the privy council, the plea rolls, selections from chronicles and from local records, with some excerpts from unprinted patent, close, fine memoranda, and pipe rolls. The primary interest of the authors lies obviously in the study of the constitutional evolution of the modern state, rather than a mere picture of the medieval government. This viewpoint results in a certain overemphasis on the power exercised by parliament over the executive through its control of taxation. Was it not the nobility and the crown that really dominated the scene? The slight space allotted to "seignorial jurisdiction" leaves the erroneous impression that after the reign of Edward I, except as a branch of the royal government, local administration (apart from the towns) fell into almost complete collapse.—SYDNEY K. MITCHELL, Yale University.

La prépondérance française: Louis XIV (1661-1715), by A. de Saint-Léger and Philippe Sagnac (Volume X of *Peuples et civilisations*, edited by Louis Halphen and Philippe Sagnac; Paris, Librairie Félix Alcan, 1935; 564 pp. 50 francs), is another of the series on European history that is now approaching completion, under the supervision of Professors Halphen and Sagnac, a comprehensive and well-balanced treatment of the period covered. The space devoted to the evolution of France is carefully weighed and limited and thus the treatment of the other countries, small as well as great ones, is properly preserved. The primacy of France is emphasized but not at the expense of the contemporary forces and personalities operating in other parts of Europe. What is confused in the general situation is indicated as confused and what is clear is indicated as clear. Overemphasis all through this volume is studiously avoided. About fifty pages are given at the outset to the analysis of the personalities and tendencies and aspirations of the different sections of Europe and then follows an examination of the leading, and to some extent of the minor, aspirations and efforts of the amorphous aggregation that we know as Europe, including even the American and Asiatic colonial world of the lands beyond the seas. An outstanding and valuable feature of this volume is the bibliographies that accompany the narrative step by step, that are, all told, very extensive and very fresh, including many new and helpful references. These bibliographies are singularly comprehensive as they cover not only the leading countries of the continent, like France and England, Austria and Spain, but the lesser ones as well. And the

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references are not only to English and French and German sources and aids but to works of importance in lesser countries and in languages less generally known. The text of this history is the result of close collaboration of the two authors at nearly every point; but what treats of the general history, of diplomacy and of wars is due particularly to M. de Saint-Léger; and to M. Sagnac, we believe, is particularly to be credited what has special connection with the internal history of France as well as certain general topics such as those dealing with the intellectual movement of the times, the contributions to knowledge and discussion, the works of Descartes and Spinoza, of Newton and Locke, to mention only a few of the formative forces of the period.—CHARLES DOWNER HAZEN.

There are those professors who write many books of indifferent value because of their number and haste, and there are professors who take a long time to write one or two books of enduring value. Professor J. W. Pratt is one of the latter. His *Expansionists of 1812*, published in 1925, won him instantly a national reputation as a sound scholar by its demonstration that the United States entered the War of 1812, not because of British maritime aggressions (however good a justification for war they were), but rather because of an expansionist urge for Canada, and for Florida. The *Expansionists of 1898* (Baltimore, The Johns Hopkins Press, 1936; viii, 393 pp. $3.00) is a worthy sequel to the other volume. It shows that the annexation of Hawaii was not the result of plotting sugar planters, as had been too lightly asserted, on too scanty evidence, but rather an "uitlander's" revolution, primarily intended for the establishment of stable white government in that archipelago. It further analyzes the influence of "pressure groups" which have been credited, or debited, by historical writers, with having influenced McKinley's decision for intervention in Cuba. Pratt impressively acquits "big business" of any such influence. He successfully shows, from close study of organs of business opinion, and from the exponents of big business like Mark Hanna, that business was positively opposed to war. An analysis of American public opinion of all groups shows that there was no demand for the Philippines, or even interest in them, until after the outbreak of the war. After the war had actually commenced, business began to suspect, after all, an opportunity of profit out of it, at least in the future, and came around to applaud the acquisition of the Philippine Islands, a vestibule for the entry of American trade into China and the strengthening of American influence there. The periodical organs of religious groups—at least

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of the Protestant group (except the Friends and Unitarians)—show an astonishing, almost a shocking, desire for war; the Catholic press did not advocate war, but was easily reconciled to it. For the first time the inner history of the Hawaiian revolutionary movement is set forth, and its relation to annexation is examined. An examination of Alfred Vagt's *Deutschland und die Vereinigten Staaten in der Weltpolitik* would have yielded a considerable amount of supplementary information concerning the international implications of Hawaiian diplomacy, for example, its relation to Samoa, and Germany's effort to secure extension of influence in Samoa as compensation for American annexation of Hawaii; but it would not have modified any of Professor Pratt's conclusions. The volume is a valuable contribution to the diplomatic history of the United States and the beginnings of American overseas imperialism, enlightening to public and to specialist alike, valuable at a time when public opinion and government have repudiated the whole policy and structure of imperialism so enthusiastically sanctioned at the turn of the century.—SAMUEL FLAGG BEMIS, Yale University.

Probably the best study of a topic in New Hampshire history that has appeared since the time of Jeremy Belknap, almost a century and a half ago, is Richard Francis Upton's *Revolutionary New Hampshire: An Account of the Social and Political Forces Underlying the Transition from Royal Province to American Commonwealth* (Hanover, Dartmouth College Publications, 1936; xiii, 276 pp. $3.00). Devoting his attention to ten aspects of the upheaval, the author has brought to light much new material and has studied it with vision that is both fresh and clear. He knows the facts and he sees their meaning. He has ideas, but is too level-headed to be carried away by them; and the conclusions he draws are the more convincing because he never claims too much. This is a study of outworn institutions and the effort to discard or reform them, of social forces and New Hampshire's attempt to direct them for the good of the largest number of its citizens. It leaves little room for biographical sketches or personal anecdotes. Yet Mr. Upton knows his men. One may not agree with his characterization of John Langdon as an "artful politician", but anyone who is at all acquainted with the Revolutionary worthies of the Granite State will concur enthusiastically in the author's appraisal of sterling William Whipple. The population of New Hampshire comprised three distinct groups with different backgrounds and characteristics: the

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comfortable inhabitants of the tide-water region, who were content to be dominated by the Portsmouth aristocracy; the men of the Merrimack Valley, of Massachusetts stock, who were farmers and traders; and the people of the Connecticut Valley, independent pioneers on the edge of the wilderness. All this is an old story, but Mr. Upton makes us see for the first time the connection between these groups with divergent interests and the peculiar course of the Revolution in New Hampshire. For instance, after the adoption of the Constitution of 1776 there was a strange situation: both the conservative tide-water region and the radical Connecticut Valley objected to the new frame of government. But their reasons for disapproval were quite unlike. Portsmouth and its environs were troubled because the adoption of a constitution savored too much of independence from Great Britain; the western towns were displeased because they did not gain as much representation as they had hoped for in the General Court. As the year 1776 progressed, the seaboard outgrew its fear of independence and accepted the constitution as a *modus vivendi* for the duration of the war; but the Connecticut Valley clung to its resentment, and in the course of time seceded temporarily from New Hampshire. This episode is the subject of one of the most interesting chapters in Mr. Upton's admirable book.—LAWRENCE SHAW MAYO, Harvard University.

The career of the Molly Maguires has long been one of the phases of American labor history demanding thorough and objective study, and J. Walter Coleman's *The Molly Maguire Riots: Industrial Conflict in the Pennsylvania Coal Region* (Richmond, Garrett and Massie, 1936; vii, 189 pp. $3.00) fills a definite need. The material it contains makes possible a far more accurate interpretation of this peculiar episode than is to be found in the works of Rhodes, Oberholtzer or Bimba. Mr. Coleman places this story of mixed personal and industrial violence within the ethnic, religious, social and economic setting of eastern Pennsylvania in the sixties and seventies. The precise relationship between the Mollies and the labor movement still remains somewhat shadowy. It is certain, however, that the Irish Catholic miners who belonged to the Ancient Order of Hibernians, a patriotic and social organization, were called Molly Maguires by the community. The Mollies were charged as a society with numerous planned crimes, including several murders, and mine officials were among the victims. Some of the so-called Mollies engaged in union activities. Largely due to Franklin B. Gowen, President of the Philadelphia and Reading Railroad, who dedicated

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himself to the destruction of trade unionism, a series of arrests and trials started in 1875. A year later, the state had secured twenty-four convictions (ten men were finally hanged), primarily on the basis of evidence presented by the Pinkerton detective, James McParlan. If some of the men were really culpable, many were found guilty merely because they were identified with the Mollies, currently believed to be a criminal society. The evidence indicates that Mollies "were closely associated with the labor movement in the . . . region, and . . . were obnoxious to the interests of the employers. . . . For this reason . . . they were exterminated by means of funds furnished by leading mining and railroad companies of eastern Pennsylvania" acting in conjunction with the local authorities. Mr. Coleman has utilized hitherto untouched sources and throws new light on the whole affair. It is unfortunate, therefore, that his volume suffers from a somewhat misleading title, poor writing and inadequate treatment of the "Long Strike"; that his conclusions are not more forthright; and that he has not made the most of the drama with which the episode was charged. These shortcomings, however, do not overshadow the positive virtues of his study.—HENRY DAVID, The College of the City of New York.

George A. Malcolm, the author of *The Commonwealth of the Philippines* (New York and London, D. Appleton – Century Company, 1936; xviii, 511 pp. $5.00), began his career as a temporary clerk in the Philippine service in 1906. From 1917 to 1935, he served first as justice and later as Chief Justice of the Supreme Court of the Philippine Islands. He is also known as the founder and dean of the College of Law of the University of the Philippines. A keen student of Philippine affairs, he has been particularly interested in legal and political questions. The present volume is a treatise on the Philippine Commonwealth and Independence Law, popularly known as the Tydings-McDuffie Law, approved March 24, 1934, and the constitution of the Philippines, adopted by the Philippine Constitutional Convention and later approved by President Roosevelt on March 23, 1935. It is the first complete and authoritative analysis of the new government, which represents the transitional step toward complete independence ten years hence. The real merit of this valuable study lies in its legalistic description of these two documents, but it lacks an adequate, historical background and interpretation to show their significance in the history of the United States and of the Philippine Islands. One wishes the author had treated more fully the arguments for and against Philippine

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independence, and the rôles of the various leaders and their organizations. He would have done well, also, to have included an estimate of the economic position of the Philippine farmer, and his relation to the American farmer, when the Islands enjoy complete independence. The reviewer would have liked to find an opinion as to the political fate of the future republic of the Philippines in the Pacific. Much of the volume consists of literary excursions into the cultural, economic, political and social background of the Philippine people. In this way, the author reveals the physical features, climate, population, finance, trade, industry, political parties, education, health and other aspects of present-day life in the Islands. His style is clear and inspiring, but the latter portion of his well-illustrated book reads like a guide book for an intelligent traveler to the Philippines. —J. H. LANDMAN, The College of the City of New York.

Trends in Australian Politics, edited by W. G. K. Duncan (Sydney, Angus & Robertson Limited, 1935; vi, 263 pp. 5/–), contains papers read before the third summer school of the Australian Institute of Political Science. Two of the papers, read by prominent politicians, deal with the historical development of political parties in recent years. Mr. J. A. McCallum then analyzes the economic bases of politics in Australia. Mr. E. L. Piesse contributes a chapter on constitutional problems, with special reference to Western Australia's secession move and to Commonwealth-State financial relations. A sketchy discussion of the world-wide decline in faith in representative institutions, by A. H. Charteris, provides a background for the elaborate scheme of political and administrative reforms presented by Professor F. A. Bland of the University of Sydney. The final and in some respects most valuable paper is that of Dr. F. R. E. Mauldon of Melbourne who gives a detailed description of state agencies of administration in Victoria. Lack of unity is inevitable in volumes of this character. In the present instance this disunity is enhanced by the liberality with which the term "politics" was interpreted by contributors. But the volume is worth a rapid reading for the sake of the light it throws on the working of democratic institutions in the southern hemisphere. — T. P. PEARDON, Barnard College.

An important phase of post-war diplomatic history is sketched briefly in J. Paul Selsam's *The Attempts to Form an Anglo-French Alliance, 1919–1924* (Philadelphia, University of Pennsylvania Press, 1936; x, 85 pp. $1.00). The author seeks to show the connection between America's withdrawal from European affairs at the

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end of the war and the rise of the alliance system; to demonstrate the essential similarity between the conduct of diplomacy in pre-war and post-war times; and to show how the failure to form an Anglo-French alliance (largely because of Britain's unwillingness to underwrite the treaty arrangements in eastern Europe) lay back of Locarno. It is too soon to expect a definitive treatment of so recent negotiations as those concerning an Anglo-French alliance. Dr. Selsam has, however, given us a useful summary of the information now readily available, and he has done something toward telling his story in its relation to the general movement of post-war diplomacy. —T. P. PEARDON, Barnard College.

Lester Frank Ward was one of the leaders of the intellectual renaissance in the United States which began in the eighties, but like his English contemporary, Herbert Spencer, to whom he was often compared, he is now forgotten. This diary, *Young Ward's Diary*, edited by Bernhard J. Stern (New York, G. P. Putnam's Sons, 1935; x, 321 pp. $3.00), covers the period 1860 to 1870, Ward's nineteenth to twenty-ninth year, and is replete with homely incidents in the life of a youth in rural Pennsylvania before the Civil War, of a private in the Union army, and of a government clerk in Washington after the War. An interesting picture is presented of the self-sufficient agrarian economy, the chauvinism fed by the Civil War, and the bureaucracy and intrigues in the government service. Through the entire scene Ward appears as a rather naïve young man, accepting the current verities, whether in the insistence on drastic treatment of the South after the Civil War, or in the demand that Democrats be forced out of the government service to allow promotions as well as positions for good Republicans. Various items indicate the barrenness and primitive character of educational facilities in Ward's early days. Wayland's textbook in economics, though written in 1837, was still being used after the Civil War, and a sign of an intellectual radical was appreciation of Paine's *Age of Reason* or John Stuart Mill's questioning of religion. A short introduction is provided by the editor.—JOSEPH DORFMAN, Columbia University.

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In Memoriam

In the fullness of his powers, OGDEN LIVINGSTON MILLS died suddenly at his New York City residence on October 11, 1937. He had served as Trustee of the Academy of Political Science for over eighteen years, had repeatedly taken the platform at the Academy's semi-annual meetings, and was Chairman of the Finance Committee when his brilliant career was prematurely terminated.

Born in Newport, R. I., of distinguished ancestry and to great wealth, Mr. Mills set a high example during his fifty-three years of what can be accomplished with such a heritage by one resolved to seize its stimulating opportunities and to conquer its inherent handicaps through the application of unflagging industry, of thorough study of each problem in hand, and through persistent and painstaking devotion to the public good as it was given him to see that good. A graduate of Harvard College (1904) and Harvard Law School (1907), he early let it be known that he had no intention of entering the ranks of the "idle rich" and that he was determined through the serious practice of law to put himself "as a matter of personal pride in a position where I am not dependent upon the income I inherited". Within a few years after graduation, he accomplished this purpose when, after an exacting clerkship, he was promoted to a partnership in the firm of Stetson, Jennings and Russell.

But Mr. Mills's deepest interest lay in public and civic affairs, for which legal training was a valuable preparation and to which he soon devoted his remarkable talents. "I felt I had a bent in that direction", he once said, "and I concluded that a man of wealth should justify his existence—jump into the civic boat and take a turn at the oars." Beginning as a poll watcher in the Republican party and proceeding with his customary thoroughness, Mr. Mills gradually worked himself forward to the highest places within the party organization, to which he remained devoted, and also successively occupied public posts of increasing respon-

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sibility—Senator of the State of New York, member of the House of Representatives, Under-Secretary, and later Secretary of the Treasury. He ran unsuccessfully for Governor of New York against Alfred E. Smith in 1926; his name was frequently considered as a prospective candidate for the highest office in the land. But to Mr. Mills, mere office seeking, or office holding, was not the fulfillment of his conception of civic duty, so he also gave unsparingly of his time and energy, and generously of his means, to many organizations dedicated to charity, to the furtherance of social welfare, and to education. Despite his manifold activities of a public character, he found time to follow assiduously his wide business interests, to serve upon the directorates of leading corporations, and, in addition, to deliver many addresses and publish several volumes setting forth his political, economic and social philosophy.

His writings and speeches reflect a clear, incisive, analytical mind; a vigorous, forthright character of strong convictions with the courage of convictions; and an able, broad, sincere personality of high ideals and vision. His field of most thorough mastery was that of public finance, upon which he had specialized throughout the years in the legislative halls at Albany and Washington, thus fitting himself to serve with distinction at the Treasury post. A tax expert and a budget expert of the first order, he never visualized fiscal problems merely from the standpoint of a technician, but comprehended them in their setting in the whole economic fabric and, through it, in their relationship to the larger question of social organization and the governmental order. In the later years, his thought concentrated more and more upon the historical fundamentals of the American system of life and government as he interpreted them; and his exposition of his conclusions was rapidly making him the intellectual leader of all those liberals and conservatives at variance with the tendency to centralize more authority in Washington. Even his opponents conceded the sincerity of his opinions and recognized the power of his arguments based on sheer force of knowledge. He was never captious in criticism, nor did he stoop to the merely dramatic appeal. He gained his position by earning it. Much appeared to lie ahead for him. His early loss, so acute to the Academy he loyally aided, can, indeed, ill be borne by the nation he patriotically served.

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